80-48

Supreme Court, U. S.
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No.————

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, MICHIGAN, et al,
Petitioners,

vs.

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al,
Respondents,

and

RONALD BRADLEY, et al,
Respondents,

and

LULAC COUNCIL No. 11054, et al,
Intervenors-Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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ADDITIONAL PARTIES

PATRICK McDONALD, JAMES HATHAWAY and CORNELIUS GOLIGHTLY, former members of the Board of Education of the City of Detroit; and NORMAN DRACHLER, former Superintendent of the Detroit Public Schools,

Petitioners,

FRANK J. KELLEY, Attorney General of the State of Michigan; MICHIGAN STATE BOARD OF EDUCATION, a constitutional body corporate; JOHN W. PORTER, Acting Superintendent of Public Instruction, Department of Education and ex-officio Chairman of Michigan State Board of Education;

Respondents,

-and-

RICHARD BRADLEY, by his Mother and Next Friend, VERDA BRADLEY; JEANNE GOINGS, by her Mother and Next Friend, BLANCHE GOINGS; BEVERLY LOVE, JIMMY LOVE and DARRELL LOVE, by their Mother and Next Friend, CLARISSA LOVE; CAMILLE BURDEN, PIERRE BURDEN, AVA BURDEN, MYRA BURDEN, MARC BURDEN and STEVEN BURDEN, by their Father and Next Friend, MARCUS BURDEN; KAREN WILLIAMS and KRISTY WILLIAMS, by their Father and Next Friend, C. WILLIAMS; RAY LITT and MRS. WILBER BLAKE, parents; all parents having children attending the public schools of the City of Detroit, Michigan on their own behalf and on behalf of their minor children, all on behalf of any persons similarly situated; and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, DETROIT BRANCH,

Respondents,

-and-

LULAC COUNCIL NO. 11054, et al,

Intervenors-Respondents.

QUESTIONS PRESENTED

1. May a federal court validly require a predominantly black school system to continuously adjust the racial composition of student bodies to compensate for population shifts and changes which are wholly beyond their cause and control?

2. Does the constitution require, in order to desegregate a predominantly black school system, the restructuring of the entire demography of a city by transporting every mathematically available while student to achieve certain racial ratios in inner-city schools thereby rendering all schools in the system predominantly black?

3. Does the constitution require, to desegregate a predominantly black school system with some one-race schools, the implementation of a system-wide rigid racial balance busing program premised upon compensating for black residential patterns existing in the city and designed to last as long as the residential patterns exist?

4. At what point in time does a school desegregation case for a predominantly black school system terminate?

5. In order for a school board to prevail in its contention that Hispanic students, enrolled in bilingual programs, should not be treated as "white" students for school desegregation transportation purposes, must it first be established that the school board practiced *de jure* segregation of such students?

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No.————————

SUPREME COURT OF THE UNITED STATES

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WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al,

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and

LULAC COUNCIL No. 11054, et al,

Intervenors-Respondents.

———————

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners, Board of Education of the School District of the City of Detroit, [Detroit Board] and other named Detroit Board petitioners respectfully pray that a Writ of Certiorari issue to review the decision rendered in this cause on April 14, 1980, by the United States Court of Appeals for the Sixth Circuit.*

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* A list of all parties to the proceeding in the Court is contained in the caption of the case in this Court.

I. OPINIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit, decided and entered on April 14, 1980, is as yet unreported and appears in the Appendix at 1a, *et seq*[1]. That decision reversed and remanded the August 15, 1978 Opinion and Order and the November 17, 1978 Amended Judgment of the U.S. District Court for the Eastern District of Michigan, Southern Division, which is reported at 460 F. Supp. 299 (ED Mich 1978), and appears in the Appendix at page 36a, *et seq*[2] and at 460 F.Supp. 325 (ED Mich 1978), and appears in the Appendix at page 79a, *et seq.*

Previous opinions and orders of the District Court include the original Ruling on Issue of Segregation by the District Court, dated September 27, 1971, which is reported at 338 F.Supp. 582 (ED Mich 1971) and appears in the Appendix at page 81a, *et seq;* the Memorandum Opinion and Remedial Decree and Partial Judgment and Order of the District Court dated August 15, 1975 which is reported at 402 F.Supp. 1096 (ED Mich 1975); the Memorandum and Order of the District Court dated November 4, 1975 ordering the implementation of the pupil reassignment plan, which is reported at 411 F.Supp. 943 (ED Mich 1975); and, an Opinion of the District Court denying recusal which is reported at 426 F. Supp. 929 (ED Mich 1977).

Two previous opinions of this Court in *Milliken* v. *Bradley* are reported at 418 U.S. 717 (1974) (*Milliken* I), 433 U.S. 267, (1977) (*Milliken* II).

Two relevant previous opinions of the Sixth Circuit in *Bradley* v. *Milliken* are reported at 484 F.2d 215 (CA 6 1973), *reversed* by *Milliken* I; and 540 F.2d 229 (CA 6 1976), *affirmed, Milliken* II.

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[1] References to the Sixth Circuit's opinion, as reprinted in the Appendix to this Petition, are made as follows: [CA 1a, *et seq*].

[2] References to the District Court opinion are made as follows: [DC 41a, *et seq*].

II. JURISDICTION

The Opinion of the United States Court of Appeals for the Sixth Circuit was entered on April 14, 1980. This Petition for Writ of Certiorari was timely filed within 90 days thereafter. The District Court's jurisdiction in this action arose, *inter alia*, through the Fourteenth Amendment to the United States Constitution.

This Court's jurisdiction arises under 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The relevant Constitutional provision is United States Constitution, Amendment XIV, Section 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

IV. STATEMENT OF THE CASE

A. History Of Litigation

This matter has been before this Court on two previous occasions.[3] The history of this litigation during the period from its inception on August 18, 1970 until the decision ren-

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[3] *Milliken* v. *Bradley*, (*Milliken* I) 418 U.S. 717 (1974) and *Milliken* v. *Bradley*, (*Milliken* II), 433 U.S. 267 (1977).

dered by this Court on July 25, 1974 is set forth in *Milliken* v. *Bradley* (*Milliken* I), 418 U.S. 717, 722-736 (1974).[4]

On remand from *Milliken* I, the case was reassigned to the Honorable Robert E. DeMascio, United States District Judge, replacing the previous Court ,the late Judge Stephen J. Roth. Judge DeMascio promptly ordered both Petitioner Detroit Board and Respondents Bradley, et al to submit desegregation plans limited to the Detroit school system and conducted evidentiary hearings which commenced April 29, 1975 and ended on June 16, 1975 consumming 32 trial days.

On August 15, 1975, the District Court issued its Memorandum Opinion and Remedial Decree and Partial Judgment and Order. *Bradley* v. *Milliken*, 402 F.Supp. 1096 (ED Mich 1975).

The Opinion rejected both the Petitioner Detroit Board plan and the Plaintiffs' plan as submitted and required Petitioner Detroit Board to develop and implement a revised pupil reassignment plan along with certain court-ordered educational components consistent with the remedial guidelines provided. *Bradley, supra,* at 1132-1145. Thereafter, subsequent to further revision and re-evaluation, an October 21, 1975 revised Detroit Board pupil reassignment plan was ordered implemented by the Court in its November 4, 1975 Memorandum and Order. *Bradley* v. *Milliken*, 411 F.Supp. 943 (ED Mich 1975).

By Memorandum, Order and Judgment of May 11, 1976, the District Court required Petitioner Detroit Board and the Respondent State Defendants to implement all facets of the desegregation plan, including the previously defined educational component programs, commencing with the 1976-77 school term with the State Defendants sharing the "excess

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[4] The jurisdiction of the Trial Court was invoked originally under 28 U.S.C. §§ 1331(a), 1343(3), (4) being an equity suit alleged to be authorized by 42 U.S.C. §§ 1983, 1988 and 2000d to redress deprivation under state law of rights guaranteed by the Thirteenth and Fourteenth Amendments to the United States Constitution.

cost" incurred in the implementation of the educational components.

All parties appealed various aspects of the May 11, 1976 Judgment. On appeal, the Sixth Circuit Court affirmed the District Court's Order concerning the implementation of and the cost sharing for the remedial educational components and affirmed the judgment of the District Court on the issue of pupil reassignment in the areas *other than* Regions 1, 5 and 8 on which issue it remanded the cause for the trial court to make further alterations in the pupil transportation component of the desegregation plan. *Bradley* v. *Milliken*, 540 F.2d 229, 237-240 (CA 6 1976).

The State Defendants were the only party to seek review of the opinion of the Sixth Circuit. The State Defendants challenged that portion of the Sixth Circuit Opinion affirming the District Court's comprehensive remedial order dealing with the implementation of the educational components and the state's obligation to defray certain costs incident thereto. This Court affirmed the opinion of the District Court and the Sixth Circuit Court on that issue. *Milliken* v. *Bradley*, (*Milliken* II), 433 U.S. 267 (1977). The pupil reassignment remand issue regarding the exclusion from the transportation component of the plan of schools in Regions 1, 5 and 8 was not appealed.

B. Present Status Of Litigation

Pursuant to the Sixth Circuit requirement for remand hearings on the issue of additional pupil reassignments, the District Court ordered Petitioner Detroit Board to show cause why it should not be compelled to include schools in Regions 1, 5 and 8 in the pupil reassignment component of the desegregation plan. On August 7, 1978, the District Court issued its Opinion and Order dealing with, *inter alia*, the propriety of including schools in Regions 1, 5 and 8 in the pupil reassignment component. *Bradley* v. *Milliken*, 460 F. Supp. 299 (ED Mich 1978); [DC 36a-78a].

The August 7, 1978 Opinion reaffirmed the District Court's prior conclusion in 1975 that the Detroit school system should not be desegregated by implementing a pupil transportation plan which resulted in making the school system more identifiably black while leaving many of its schools 75-90 percent black. *Bradley, supra,* at 303-305, 309-310; [DC 40a-44a, 53a-54a].

The District Court held that the unrebutted proofs demonstrated that the remaining majority one-race schools in the system were not the result of present or past acts of racial discrimination by the Defendants and that the effects of past acts of discrimination as to pupil assignments in the system had been obliterated. *Bradley, supra,* at 307, 308; [49a-51a]. The existing racial imbalance in the system was not found to be a resulting vestige of any intentional segregative act or acts on the part of Defendants.

Based upon these findings, the District Court held that in light of the present racial ratios in the vast majority of the schools, the predominance of black students in the school district as a whole and the accelerated population shifts, no more pupil transportation was feasible in Regions 1, 5 and 8 collectively. *Bradley, supra,* at 307; [DC 49a].[5]

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[5] However, after having found that the Detroit Board had satisfied its burden of showing that the remaining one-race schools were not the current vestiges of prior unconstitutional acts, the District Court determined that it would be mathematically possible to exchange students between the few majority white schools remaining in Region 2 with a few of the predominantly black schools in Region 1 and thus ordered that the Detroit Board submit a plan for additional pupil reassignments. *Bradley, supra* at 311-312; [DC 56a-59a]. Regional School Map 121a, 116a.

On November 17, 1978, the District Court entered its Amended Judgment of the May 11, 1976 Judgment, requiring the Detroit Board to implement additional pupil reassignment involving the transportation of between 1,600 to 1,900 additional students as a result of boundary changes and school closings. *Bradley* v. *Milliken,* 460 F.Supp. 325 (ED Mich 1978); [DC 79a-80a].

In 1978 at the time of the Opinion and Amended Judgment, the enrollment of the Detroit school district was estimated to be 218,110 students, of which 184,230 were black students. In 1979, there were approximately 216,000 students with a racial composition of 182,214 black students and 29,165 white students or approximately 85% black and 13% white enrollment. [108a].

By contrast, in 1970-71 when this lawsuit was instituted, there were 289,743 students enrolled of which 184,194 or 63.6% were black students. *Bradley* v. *Milliken*, 338 F.Supp. 582, 585 (ED Mich 1971); [DC 84a-85a]. In the school year 1974-75, immediately prior to the desegregation order, there were 257,396 students enrolled of which 184,118 or 71.5% were black students with 26.4% white students. *Bradley* v. *Milliken*, 402 F.Supp. 1096, 1106 (ED Mich 1975).

Thus, in the ten years this matter has been in litigation, there has been an increase in the percentage black student enrollment in the Detroit school system of approximately 22 percent, along with a corresponding decrease in enrollment of over 73,000.

This black racial percentage change has accelerated beyond District Court projections made in 1971 and 1975. See, *Bradley*, 338 F.Supp. at 585; *Bradley*, 402 F.Supp. at 1137; and, *Bradley*, 460 F.Supp. at 305. There has been a corresponding decline in the percentage white student enrollment of approximately 21.8%.

Between the years 1971-76, the total student enrollment declined at a rate of approximately 10,000 students per year, while the number of black students remained fairly consistent at approximately 185,000 students. The yearly decline of 10,000 students has occurred primarily due to the fewer white live births in the City each year and a lower school retention rate for white students who entered the Detroit Public Schools. *Bradley* v. *Milliken*, 460 F.Supp. at 305-306; [DC 45a-47a].

As a consequence of the declining student enrollment, black students as a percent of total enrollment have increased at the rate of approximately 2% per year with a corresponding

2% decrease in white student population. *Bradley* v. *Milliken*, 402 F.Supp. at 1107. More recently, between 1974-78, black enrollment as a percentage of total enrollment increased from 71.6% to 84.5% or an average of 3.22% per year. These pronounced percentage black student enrollment increases were evident throughout the breadth of the entire school system. Superintendent's Affidavit 108a-109a; *Compare* Residential Maps 113a, 114a, 115a, 117a, and 119a. This trend is independent of student assignments. *Bradley*, 460 F.Supp. at 306; [DC 46a].

This increase in percentage black student enrollment is projected to stand at 89.6% black by the 1980-81 school term and 91.8% black by the 1981-82 school term. *Bradley*, 460 F.Supp. at 305; [DC 44a]. *Compare Bradley*, 338 F.Supp. at 585; [DC 135a], with the original 1980-81 projection with a 80.7% black enrollment.

This continuing rise in the percentage black student enrollment occurs within the context of the City of Detroit population which peaked in 1950 and has been steadily declining since then at the rate of approximately 169,500 per decade. *Bradley*, 338 F.Supp. at 585; [DC 84a]; *Bradley*, 402 F.Supp. at 1106.

Within the context of a declining general city population and declining overall student enrollment, enrollment in those schools involved in the pupil reassignment plan in Regions 2, 3, 4, 6, and 7 has reflected an increase of 5,263 black students due to families moving into these Regions of the system and a decrease of 3,393 white students due to the movement out of white families. Thus, while in 1975, before the implementation of the desegregation plan, the schools now involved in the reassignment plan averaged 45.2% black enrollment, as of February, 1977 those same schools averaged 55.4% black enrollment.

By February, 1977, the majority of elementary schools emanting from the inner city, in all directions, were 55% or more black by *resident* population. Region Map 115a, 117a. Eighteen adjacent attendance areas had become 30-55% *resi-*

dent black and only 39 attendance areas in the entire system were under 30% black by *resident* student population. *Bradley*, 460 F.Supp. at 306; [DC 47a].

After February, 1977, under the current pupil reassignment plan, there were only six schools in the entire system which were under 30% black enrollment. Each of the six schools was conducting a bi-lingual program for a substantial group of non-English speaking students. Therefore, while the school may be under 30% black student enrollment, it may not conversely be said that those schools are composed of 70% "white" students due to the ethnic groups involved in the bi-lingual programs. Regional Map 118a, 120a 124a-125a.[6]

Large numbers of *resident* black students are evident even in schools located at the City's boundaries, reflecting the significant increases in black student enrollment throughout the system as a whole occurring since 1969. Mixed residential areas may now be found in all parts of the City. *Bradley*, 402 F.Supp. at 1111. As a result of the mixed residential areas and the application of the *current* student assignment plan implemented in 1976[7] there was only one

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[6] The guidelines for desegregation provided that schools should not have a black student population less than 30 percent. A school is treated as desegregated whose student body is between 30-55% black *Bradley*, 460 F.Supp. at 305; [DC 43a]; *affirmed* in areas other than Regions 1, 5, and 8, *Bradley*, 540 F.2d at 239-240. However, the Sixth Circuit modified its affirmance of the guidelines at *Id*, in its April 14, 1980 Opinion by removing the 30-55% range in requiring all white students to be considered available for reassignment up to the point leaving a school 45% white (or not more than 55% black). [CA 17a].

[7] The current plan adopted by the District Court became effective at the beginning of the Winter-Spring semester, 1976. That plan required the reassignment of 27,524 students, of whom 21,853 were transported by bus. The plan changed the racial balance of 105 schools out of approximately 300 zoned schools in the system. At the commencement of the 1979-80 school year, the Detroit system was still transporting approximately 21,500 students for purposes of desegregation. *Bradley*, 540 F.2d at 236-237.

school in the Detroit school system at the outset of the 1979 school year which had less than 31.9% black student enrollment. Now there is *no* school with less than 30% black enrollment. [120a].

It was within the context of the foregoing demographic and documentary evidence presented at the remand hearing that the District Court found that the current racial ratios in the vast majority of Detroit schools were the result of the predominance of black students in the school district and the accelerated population shifts throughout the City of Detroit. The Court concluded that both of these factors, acting independently of any Board student assignment policy, have obliterated the optional and gerrymandered attendance zones and the practice of altering feeder patterns in racially changing neighborhoods. *Bradley,* 460 F.Supp. at 307-308 [DC 49a-51a].

However, once having made these findings, the trial court nonetheless proceeded to require additional pupil transportation between schools in Regions 2 and 1, totaling approximately 1,600 additional students affecting the total of 12 elementary and middle schools out of a total of 74 elementary and middle schools in Regions 1 and 2 (i.e., 5 schools in Region 1 and 7 schools in Region 2).

In reviewing this case on appeal, the Sixth Circuit Court rejected the District Court's findings and rulings relative to the current record evidence as being contrary to the law of the case, without critical examination or making new findings of fact, but affirmed in principle the propriety of ordering additional pupil reassignments. On remand, the Sixth Circuit also required the taking of evidence to determine if Hispanic students had suffered *de jure* segregation. Only if it was established that they had been discriminated against, would they be considered "minority" students and not "white" students for purposes of additional transportation.

The Sixth Circuit Court also affirmed the denial of recusal by the District Court but nonetheless "suggested" that the

Chief Judge of the District Court reassign the case to another judge.

V. REASONS FOR GRANTING THE WRIT

This Petition arises from the Sixth Circuit Court of Appeals opinion of April 14, 1980 reversing and remanding the District Court's holding[8] that based upon a school-by-school examination of student enrollment by residence and as affected by student assignment, the school district no longer discriminates against black students and the present assignment pattern is free from the vestiges of prior discrimination. [DC 50a].

The predicate for this reversal was a *sua sponte* "finding" by the Sixth Circuit *de hors* the record that all population shifts and all private housing choices in Detroit are "vestiges" of prior school segregation by the Defendants. The result of this reversal is the imposition of a system-wide racial balance busing requirement promising nothing more than token integration and designed to stay in effect interminably, instead of applying the principles of *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976).

Both the predicate and the result of the Sixth Circuit opinion erroneously conflict with applicable decisions of this Court and of other federal courts of appeals on the same matter. To the extent that the decision ineluctably prescribes a never-ending remedy, it has articulated an important question of federal law dealing with the treatment of one-race schools in predominantly black school systems which has not been, but should be, settled by this Court.

The decision of the Sixth Circuit amounts to nothing more than a *post hoc* rationalization for the attainment of a certain desired result: system-wide racial ratios. It reflects an unconcern with established principles of constitutional law. In-

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[8] *Bradley* v. *Milliken*, 460 F.Supp. 299 (ED Mich 1978); [DC 36a-78a],

stead, the Sixth Circuit has constructed its own idiosyncratic legal system consisting of presumptions *de hors* the record, so-called immutable facts and irremediable "vestiges" resulting in a self-defeating requirement for more busing in the 85% black Detroit school district while the predominantly black systems of Richmond, Virginia in the Fourth Circuit, Atlanta, Georgia in the Fifth Circuit and Pasadena, California, are deemed to operate unitary school systems with numerous one-race schools under a "different" constitution.

Once a court determines, as the Sixth Circuit did here, that desegregation is to be defined in terms of busing, then compulsory, system-wide racial quotas follow as a primary means for the effectuation of that goal. The more predominantly black and geographically far flung the school district the more extensive and rigorous the compulsory transportation required to effect it. The Sixth Circuit opinion can only be justified on the basis that the constitutional requirement to desegregate is now simply a synonym for system-wide busing.

This case presents a particularly rigid judicial requirement for a racial mix and therefore, a particularly onerous and tragic busing obligation. Onerous, because it impacts system-wide on previously court-approved assignment patterns of five years duration by uprooting large numbers of students in admittedly desegregated schools for the remote possibility of a racial change of a few percentage points in a handful of schools; tragic, because 10 years after the commencement of this litigation, nine years after the implementation of the first interim desegregation plan and five years after the implementation of a multi-faceted, court ordered desegregation plan including remedial educational components and grade reorganization affecting every school in the system, along with pupil transportation, the Sixth Circuit still persists in viewing desegregation in Detroit solely in terms of pupil transportation.[9]

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[9] The transportation component is only one part of the Detroit plan. All schools, including those in Regions 1, 5 and 8 participate to the

In effect, the Sixth Circuit has held that regardless of any steps taken by school officials in the form of educational components to eradicate identified vestiges of segregation and regardless of concurrent population shifts and demographic changes which have obliterated other vestiges, a predominantly black school system can never be desegregated until all available white students are dispersed throughout the system pursuant to a racial balance formula, which in this case requires that no school is to have *any more or less than* 45% white enrollment. [CA 17a].[10]

The Detroit Board categorically disputes both the vitality and validity of the Sixth Circuit opinion. This Petition states the legal error contained therein and is a respectful request that this Court exercise its supervisory powers over the Court below and grant certiorari at this time.

A. The Sixth Circuit Definition Of Desegregation In A Predominantly Black School System Is In Conflict With The Fourth and Fifth Circuits And This Court's Holding In Pasadena

Even though Detroit, since February, 1976 has transported more than 21,000 students, revamped its elementary, middle schools and high school grade structures, redrawn attendance lines, created magnet schools and moved faculty, all pursuant

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fullest extent in the remedial educational components which this Court unanimously affirmed as being a proper and effective desegregation plan by stating: "Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation . . ." *Milliken* II, *supra,* at 287. Yet, because Regions 1, 5 and 8 are not in the busing component, the Sixth Circuit states they are excluded from the desegregation plan.

[10] This is not the first time the Sixth Circuit has erred in defining "actual desegregation" in Detroit. *Milliken* I, *supra,* at 739-741. This Court should likewise reject the current view of "desegregation" in Detroit being defined as a rquiremnt for a system-wide racial quota.

to Court order in the name of desegregation, the Sixth Circuit is tenaciously insisting on additional transportation of students in a system over 85% black.

This insistence is despite the fact that federal courts have been supervising desegregation efforts in Detroit for over nine years, and the fact that the district continues to increase in black enrollment by 2% a year.

Whether or not a desegregation plan is constitutional now depends on the circuit in which the school district is located. Is there one constitutional standard for Atlanta (5th Circuit), and Richmond (4th Circuit) and a vastly different constitutional standard for Detroit (Sixth Circuit)?

In 1975, Atlanta operated 148 schools in the city system of which 92 had student bodies which were over 90% black. In 1980, the Atlanta school system operated 126 schools, 90 of which are over 90% black. Source: Office of Labor and Management, Atlanta Public Schools. The District Court in Atlanta found the Atlanta School District was unitary and had purged itself of all vestiges of the formerly state imposed dual system. Unlike the Sixth Circuit, these findings were affirmed by the appellate Court.[11]

In *Bradley* v. *The School Board of the City of Richmond,*

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[11] The Fifth Circuit noted that the aim of the Fourteenth Amendment is to assure that state supported educational opportunity is afforded without regard to race; it is not to achieve racial integration in public schools. *Calhoun* v. *Cook*, 522 F.2d 717, 719 (CA 5, 1975).

A statistical comparison shows that Atlanta, Georgia with a school population of 71,991 students of whom 65,344 or 90.7% are black is substantially identical to Detroit which has a student population of 216,000, of which 182,214 or 85% are black. The Detroit school system operates 261 school buildings while the Atlanta school system operates 126. As of June, 1980, 86.5% of the elementary schools in Atlanta have enrollments of 55% or more black students. 95.4% of the senior high schools had greater than 55% black enrollment. In Detroit, 88.7% of the elementary schools had greater than 55% black enrollment, 91.6% of the middle schools and 91.6% of the high schools had greater than 55% black enrollment. Source: Office of Budget and Management, Atlanta Public Schools.

Virginia, 462 F.2d 1058, *affirmed by an equally divided court*, 412 U.S. 92 (1972), the Fourth Circuit considered an appeal from an order of the District Court integrating schools in Richmond (83% black in 1980) with those of adjacent counties. The Fourth Circuit, unlike the Sixth Circuit, held that in the context of a predominantly black school system having many one-race schools as in Detroit, further intervention by the District Court was neither necessary nor justifiable [452 F.2d at 1069] absent any constitutional violations in the establishment or maintenance of the three school districts in Virginia.[12]

In analyzing the cause for the residential concentration of blacks in Richmond as compared to the white populations in the suburbs, the appeals court rejected the District Court's finding that *de jure* segregation has been responsible stating:

> *"[T]his record warrants no other conclusion than that the forces influencing demographic patterns in New York, Chicago, Detroit, Los Angeles, Atlanta and other metropolitan areas have operated in the same way in the Richmond metropolitan area to produce the same result. Typical of all these cities is a growing black population in the central city and a growing white population in the surrounding suburban and rural areas. Whatever the basic causes, it has not been school assignments, and school assignments cannot reverse the trend.* That there has been housing discrimination in all three units is de-

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[12] For the school year 1970-71, the years relevant to the appeal in that case, the Richmond City School Board operated 57 schools, and the racial composition of the public population was approximately 64% black and 36% white. 460 F.2d at 1062. Source: Deputy Superintendent's Office, Richmond Public Schools. A statistical comparison of the Richmond, Virginia school district with the Detroit public schools reveals the following: In 1979 the Richmond school district had a school population of 32,577 students, of whom 27,284 or 83.7% were black. The Richmond school district operated 48 schools of which 96.5% of the elementary schools were greater than 55% black, 90% of the middle schools were greater than 55% black and 100% of the Senior High Schools had a 55% or greater black enrollment. *Id.*

> plorable, but a school case, like a vehicle, can carry only a limited amount of baggage, *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. at 24, 91 (1971)." 462 F.2d at 1066 (Emphasis added).

The comparison set forth below at the elementary school level highlights the fact that the Sixth Circuit is applying a different constitutional standard than the Fourth and Fifth Circuits.

1979-80	*ATLANTA*	*RICHMOND*	*DETROIT*
No. of Students	71,991	37,977	219,076
% Of Black In System	90.7%	83.7%	85%
% Of Elementary Schools 55% Or More Black	86%	96.5%	88.7%

The pattern and result of the demographic changes in the three cities have been substantially the same. In Richmond and Atlanta, the respective Circuit Courts reviewed the same set of demographic and population data and concluded that those demographic changes resulted in abolishing the vestiges of state imposed segregation. On the other hand, the Sixth Circuit reviewed virtually the same data in Detroit and concluded that the demographic changes were the product of *de jure* segregation.

Why should Detroit, which in February, 1976 undertook massive Court ordered busing, be now required to redo all of its efforts, retransfer its students and again traumatically disrupt the system. The Fourth and Fifth Circuits would say there is no reason to do so. The Sixth Circuit insists on such action.

Now is the time for this Court to give guidance in such a situation.

B. The Court Of Appeals Abused Its Discretion By Ignoring The Mandates Of This Court Regarding Judicial Review Of Desegregation Plans Which Have Yielded Present Neutral Assignment Patterns And Policies

The opinion of the Sixth Circuit declares that after 10 years of litigation and five years of multi-faceted court-ordered desegregation plans, Detroit is not a unitary system but rather needs further busing to achieve "effective" desegregation levels. To justify this new constitutional standard, the Sixth Circuit ignored the effectiveness of the current plan which has resulted in non-discriminatory assignment patterns and desegregated schools.

This Court has expressly identified the specific acts of segregation occurring in Detroit which define the scope of the constitutional violation.[13] Additionally, the District Court, the Sixth Circuit and this Court have concurred on the de-

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[13] In reviewing the 1971 findings of Judge Roth in the present case, *Bradley* v. *Milliken*, 338 F. Supp. 582, 587-589 (1971); [DC 89a-93a], this Court noted the following specific unconstitutional acts of segregation:

(a) the creation of optional attendance zones in neighborhoods undergoing racial transitions;

(b) the drawing of attendance zones along north-south boundaries while aware that east-west boundary lines would have resulted in significantly greater desegregation;

(c) the transportation program to relieve overcrowding had bussed black students to predominantly black schools away from white schools;

(d) the State supervised school construction program resulted in 13 new schools being built in either overwhelming black or white neighborhoods;

(e) the State of Michigan had failed, until 1971, to provide authorization or funds for transportation of Detroit students regardless of poverty or distance; and,

(f) through Act 48 the State had acted to delay racial integration in Detroit schools. *Milliken* v. *Bradley*, 418 U.S. 717, 725-727 (1974).

Even the Sixth Circuit does not contest the fact that these specific acts of *de jure* segregation have now been completely eliminated in Detroit.

segregation components necessary to effectively redress the adjudicated "vestiges" of segregation in Detroit.[14] Pursuant to these findings the District Court ordered the implementation of a plan which eliminated each of the specific acts of *de jure* segregation and set in place a series of pupil reassignment and educational components designed to eradicate each specifically identified vestige of segregation.[15]

Direct unwarranted intervention in the operation of a school system is not sanctioned in the law, and it should not be continued longer than necessary.[16] Nevertheless, the Sixth Circuit has seen fit to intervene *de novo* in the operation of the Detroit school system notwithstanding the implementation of

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[14] *Bradley* v. *Milliken*, 411 F.Supp. 943 (1975); *Bradley* v. *Milliken*, 540 F.2d 299 (1976) and *Milliken* v. *Bradley* (*Milliken* II), 433 U.S. 267 (1977). In short, *de jure* segregation no longer exists in Detroit. See, e.g., *Washington* v. *Davis*, 426 U.S. 299 (1976).

[15] The desegregation plan proposed by the Detroit Board and adopted by the District Court included and excluded numerous options as contemplated by *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1971). The plan was reaffirmed by the District Court after "evaluation in practice" *Green* v. *County School Board*, 391 U.S. 430, 439 (1968), and the District Court was satisfied "that state-imposed segregation has been completely removed". *Green*, *supra*, at 439. The Court of Appeals has been clearly unable to hold that ". . . the availability to the board of other more promising courses of action . . . indicate a lack of good faith . . ." *Green*, *supra*, at 439; *Milliken* II, *supra*, at 280, n. 15, 288, n. 19.

[16] In fact, "once a school district has implemented a racially neutral attendance pattern in order to remedy constitutional violations, the lower court has fully performed its function of providing the appropriate remedy for previous racially discriminatory attendance patterns . . ." *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, (1976). "To be sure, direct intervention in the operation of a school system is not to be welcomed, and it should not be continued longer than necessary." *Morgan* v. *McDonough*, 540 F.2d 527, 533 (CA 1, 1976); also see, *Swann*, 402 U.S. 1 (1971); *Milliken* II, 433 U.S. 267 (1977); *Dayton I*, 433 U.S. at 406 (1977); *School District of Omaha* v. *Armstrong*, 433 U.S. 672 (1977).

neutral attendance patterns,[17] the elimination of specific acts of *de jure* segregation, the eradication of adjudicated "vestiges" of segregation[18] and the total remediation of the constitutional violation. Despite the metro-or-bust approach of the Sixth Circuit,[19] there are legal, factual, and practical limits to a federal court's jurisdiction to intervene in the educational process under the disguise of "desegregation" which is really a pretext for arrogating plenary powers.[20]

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[17] The District Court, on the two occasions it has reviewed this issue, has taken every conceivable step to avoid the process often described as "resegregation". Notwithstanding the District Court's success in this area and the consequent fact that only "The quite normal pattern of human migration resulted in some changes in the demographics of [Detroit's] Pasadena's residential patterns . . ." *Pasadena City Board of Education* v. *Spangler, supra,* at 436, the Court of Appeals, by creating factually unorthodox premises, seeks to avoid the legal consequences articulated in *Pasadena* when ". . . these shifts were not attributed to any segregative actions on the part of the petitioners." *Pasadena City Board of Education* v. *Spangler, supra* at 436.

[18] In *Keyes* v. *School District No. 1,* 413 U.S. 189, 211 (1973), it was stated that the witch-hunt for vestiges of past segregation can reach its own point of diminishing returns and the relationship between the past segregative acts and present segregation may become so attenuated as to be incapable of supporting a finding of *de jure* segregation warranting judicial intervention.

[19] The Sixth Circuit's recent opinion is repleat with express and implicit metropolitan remedial objectives which unmask the Court of Appeals' frustration and desperation in pursuit of a metropolitan remedy. The current opinion represents a judicial attempt to impose onerous and inappropriate remedial burdens on the parties and to prod the litigation into a metropolitan stance.

[20] "In a word, 'There are undoubted practical as well as legal limits to the remedial powers of federal courts in school desegregation cases." *Milliken* II, *supra,* at 280, n. 15.

There is no obligation on a district court to continue to play "shuffle board" with the students of a desegregating school district, instead, "The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation". *Green, supra,* 439. It is the Court of Appeals which transcends the protections

In the present case, the Sixth Circuit has castrated the role of the District Court by ignoring the requisite balancing of individual and collective interests; totally refusing to credit the District Court's evaluation of the effectiveness of the desegregation plan in practice; *sua sponte* expanding the scope of the violation *de hors* the record;[21] and summarily dismissing any consideration of the statistical practicalities of Detroit,[22] all without critical examination of or support in the current record evidence. The Sixth Circuit justifies its position by relying solely on the state of the original 1971 record as an immutable never-ending fact. [CA 7a-13a]. It has thereby exceeded its authority as a court of review by departing from

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and demands of the constitution when it orders escalated pupil transportation when at best the increased transportation is founded on the Court's acknowledgment that "genuine constitutional desegregation may be impossible within the Detroit district . . ." *Bradley* v. *Milliken*, [CA 19a].

[21] The Court of Appeal's principle concern with housing patterns is more expansive than the city limits of Detroit. The concern is metropolitan in nature and scope. *Bradley* v. *Milliken*, [CA 7a, 9a-10a, 12a-13a, 19a]. The Sixth Circuit is attempting to create a metropolitan-like violation, which the record does not support, by classifying current residential patterns as "vestiges" of past school segregation in order to prematurely force, *de facto* or *de jure*, a metropolitan remedy in this case. Compare, *Bradley* v. *Milliken*, [CA 30a], and *Milliken* v. *Bradley*, 418 U.S. 745 (1974).

[22] While conceding that any further "genuine desegregation may be impossible within the Detroit district", *Bradley* v. *Milliken* [CA 19a], the Court of Appeals curiously held that the district court remand inquiry was limited to a consideration of "whether . . . white students can practically be reassigned to achieve . . ." an increase in the number of schools with some white students in attendance. *Bradley* v. *Milliken*, [CA 17a]. In essence, the Court of Appeals has now established the principle of "token integration" and pupil reassignments by "trial and error" because, according to the Sixth Circuit, it "is irrelevant that there are 11 times as many black students in all the inner-city elementary schools combined as there are white students available for reassignment." *Bradley* v. *Milliken*, [CA 17a].

the accepted and usual course of judicial proceedings thus warranting review on certiorari.

C. The Sixth Circuit Erred By Ignoring This Court's Express Approval Of The Avoidance of Disturbing Naturally Integrated Neighborhoods In The Absence Of A Reasonable Assurance Of More Meaningful Desegregation

In *Milliken* II[23] this Court endorsed the District Court's approach to pupil transportation as a "workable plan" particularly because it "sought carefully to eliminate burdensome transportation of Negro children to predominantly Negro schools and to prevent the disruption, by massive pupil reassignment, of racially mixed schools in stable neighborhoods which have successfully undergone residential and educational change."[24]

On remand, the Sixth Circuit took a contrary position. Although the opinion ingenuously states: "We emphasize that this remand is not intended to disrupt previously approved assignment patterns" [CA 18a], how can it be otherwise when the District Court has already ruled that further desegregation is not possible and that it would be unwise to disturb assignment patterns. [DC 53a]. Disruption is at the very core of the remand order.

This is so because the Sixth Circuit *changed* the remedial guidelines heretofore approved by it. Instead of a 30-55%

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[23] *Milliken* II, *supra* at 288, n. 19.

[24] "The cumulative effect" of pupil transfer programs must be measured on a school-by-school basis in a desegregation case for such is the only operational level on which actual segregative effects can be measured and on which it can be determined whether the transfer policy reduces segregation or reinforces the existence of a constitutionally impermissible dual school system. *Lee* v. *Eufaula City Bd. of Ed.*, 573 F.2d 229 (CA 5 1978). The District Court in Detroit tested the desegregation plan on a school-by-school basis. *Bradley*, [DC 50a]; 460 F. Supp. at 308.

black student enrollment range being the yardstick for a desegregated school, the Sixth Circuit is requiring the reassignment of *all available* white students from formerly integrated schools in the 30-55% black range, until that school stands at not less than 55% black (nor more than 45% white). [CA 17a].

Contrary to the blandishments that the remand instructions are not meant to be a straight jacket in the District Court [CA 18a], the Sixth Circuit opinion is doctrinally designed to achieve a systemwide predominately black racial balance by undoing five years of court-ordered and approved assignment patterns in the very schools and neighborhoods which are most stable and reflective of the highest degree of genuine desegregation.[25]

The inherent injustice in the Sixth Circuit's querulous approach to the District Court's efforts to achieve actual and effective desegregation is further highlighted by the Sixth Circuit's reluctant admission that its order and the remand[26]

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[25] *Bradley* v. *Milliken*, 402 F. Supp. 1096, 1127-28 (ED Mich 1975); *Bradley* v. *Milliken*, 460 F. Supp. 299, 304, 309-10 (ED Mich 1978) [DC 42a-44a, 53a-55a].

Ironically, three months before this Sixth Circuit opinion rejecting in principle the concept of avoiding disruption in naturally integrated neighborhoods and schools in preference to the concept of all-out racial balance, three Justices referred approvingly to the 1976 opinion of the Sixth Circuit which rejected the course it now takes, that of rendering all of Detroit's schools identifiably black. *Estes* v. *Metropolitan Branches of Dallas NAACP*, 48 U.S.L.W. 4118, 4121-22 (1980) (Powell, Stewart and Rehnquist, J.J. dissenting).

[26] In (No. 77-1467) *South Park Independent School District* v. *U.S.*, and (No. 78-222) *Board of Education for the City of Valdosta, Ga.* v. *U.S.*, 439 U.S. 1007, 58 L.Ed2d 684, *reh den*, 439 U.S. 1135, 59 L.Ed2d 98 (1978) (Rehnquist, J., dissenting), while denying certiorari, the dissenting Justices condemned the very practice employed by the Sixth Circuit in the present case:

> "Obviously we cannot review in this Court every school desegregation case decided by a Court of Appeals, and particulary where, as here, the Court of Appeals merely remands the case to the District Court for further proceedings, there is a very natural

were at best an exercise in futility. The Court of Appeals' open attack on naturally integrated schools and neighborhoods is virtually a *de jure* act of school resegregation representing the first judicial reestablishment of a dual school system since *Brown I*.[27] This Court has rejected such attempts to resegregate by school officials, and should tolerate no less from the federal courts, regardless of purportedly benign motives.

D. The Court Of Appeals Erred By Adopting a Novel Theory Of Desegregation: Token Integration By Trial And Error

In Detroit, where the student population is 85% black and 13% white where 21,500 students are currently being transported for desegregation purposes; where there are 177 elementary schools, 60 middle schools and 24 senior high schools; where the population is declining by 10,000 students per year and the percentage black enrollment is increasing by 2% per year, the Sixth Circuit's lack of concern with the realities of Detroit by defining "desegregation" in terms of a requirement for system-wide racial ratios and its lack of concern with the probability of success or increased effectiveness of the desegregation plan, represents the blatant adoption of the

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tendency to conclude that the decisions of the Court of Appeals are not deserving of plenary review . . . the interminable pendency of school desegregation litigation resulting from remand orders such as these is precisely what was condemned in *Pasadena, supra.*" 58 L.Ed2d at 684.

[27] Token integration will render all schools racially identifiably black in Detroit. Token integration has never before been adopted as an acceptable desegregation tool, but instead has consistently been rejected because "In a word, 'there are undoubted practical as well as legal limits to the remedial powers of the federal courts in school desegregation cases.' ". *Milliken* v. *Bradley* (*Milliken* II) 433 U.S. 267 at 280, n. 15; *Bradley* v. *Milliken*, 540 F.2d 229, 239 (CA 6 1976), previously rejecting "desegregation" which would result in accelerating the racial identifiability of the system.

heretofore unarticulated constitutional theory of token integration (by trial and error) as a desegregation tool.

In total contradiction of well-established principles against token integration and its own prior opinion rejecting token integration as a viable desegregation tool,[28] the Sixth Circuit now adopts this approach which has been until now, soundly rejected in desegregation litigation.

Contrary to the belief of the Sixth Circuit, federal courts are not free to wantonly experiment with various transportation and statistical approaches year after year. The Courts must determine if increased and repeated interferences with the individual rights of students and parents and the managerial rights of local school boards will result in "genuine constitutional desegregation" of prior unlawful acts, which promises realistically to work now. Token integration or specific racial ratios have never been, and are not now enough.[29]

Even more offensive to the constitution is the Sixth Circuit's willingness to order purported "desegregative" measures which offer no assurance of increased actual desegregation; increased desegregation effects;[30] or eradication of specific and identifiable "vestiges" of past segregation.[31] The Sixth Circuit's order offers only burdens and neglects to promise constitutionally sanctioned benefits now.[32] Not only does the Sixth Circuit

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[28] *Bradley* v. *Milliken*, 540 F.2d 229, 239 (CA 6 1976).

[29] See, *Calhoun* v. *Cook, supra;* and, *Bradley* v. *School Board of the City of Richmond*, 462 F.2d 1058 (CA 4 1972), *aff'd*, 412 U.S. 92 (1973).

[30] Compare, *Bradley* v. *Milliken*, 402 F.Supp. 1096 (ED Mich, 1975); and *Bradley* v. *Milliken*, 411 F.Supp. 943, 944-946 (ED Mich 1975).

[31] Compare, *Bradley* v. *Milliken*, 402 F.Supp. 1096 (ED Mich 1975); and *Bradley* v. *Milliken*, 540 F.2d 229 (CA 6, 1976).

[32] The current position of the Court of Appeals directly contradicts its previous position in *Northcross* v. *Board of Education of Memphis City Schools*, 489 F.2d 15, 17 (CA 6 1973), where the Court held that transporting pupils to produce negligible desegregative results was

fail to identify a current unconstitutional condition or effects of a prior adjudicated violation, but its mandate also fails to remedy the condition which it attempts to eliminate, i.e. residential segregation.

E. The Sixth Circuit's Transformation Of This Litigation Into A Housing Discrimination Case Is Contrary To The Law Of The Case

The Sixth Circuit ruled, without giving the close or critical examination of the record which it requires of the trial court, that the District Court's finding of no current vestiges of prior segregation was contrary to the law of the case, citing Judge Roth's original 1971 violation findings, the Court's affirmance thereof and *Milliken* I. [CA 7a-11a]. Instead, the Court states that the law of the case is that the prior actions of the Defendants contributed to segregated residential patterns whose effects are presumed to be the growing percentage of black student enrollment for which the District must implement a system-wide racial balance busing plan as a remedy.

The Sixth Circuit has twice rejected the Detroit Board's contention that *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976), does not require a school board to periodically modify a desegregation plan to compensate for migration patterns which shift the distribution of races within a school district. *Bradley, supra*, 540 F.2d at 238-239; *Bradley, supra*, [CA 21a]. Rather, the Sixth Circuit has now adopted a position, without any current record evidence measuring the segregative effect, if any, of prior claimed housing pattern violations attributable to the Defendants,[33] that as long as

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unacceptable as a desegregation remedial tool. Also see, *Swann, supra; Quality Education For All Child, Inc.* v. *School Board, et al. Ill.*, 385 F.Supp. 803, 823-824 (DC Ill 1974); *Davis* v. *Board of School Commissions of Mobile Co.*, 430 F.2d 883, (CA 5 1970); *Mannings* v. *Board of Pub. Instruction of Hillsborough Co., Fla.*, 427 F.2d 874 (CA 5 1970).

[33] *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 419-420 (1977).

residential patterns reflect concentrations of blacks, white or Hispanos in Detroit, the *Pasadena* case is inapplicable and, therefore, repeated readjustments of the pupil transportation component is and will be, *ad infinitum*, constitutionally required. *Bradley* v. *Milliken*, [CA 18a].[34]

The Sixth Circuit concluded that Detroit's "population changes themselves are in part vestiges of past [school] discrimination". *Bradley* v. *Milliken*, [CA 13a]. This conclusion is not supported by the record. After reversing both Judge Roth and the Sixth Circuit in 1974, this Court criticized the school officials and other defendants *only* for their "reactions" to changing residential patterns and has never held these defendants responsible or accountable for individual citizen choice and location of personal housing. *Milliken* v. *Bradley*, 418 U.S. 745 (1974). Yet, by classifying the current residential patterns as "vestiges" of school segregation, the Court of Appeals *sua sponte* opens the door to a never-ending obligation[35] on school officials to remedy alleged discriminatory metropolitan housing patterns which are totally beyond the control of and in this case, outside the cause of school officials.

School desegregation is a remedy for ills within schools and school systems. To collaterally attack housing patterns through poorly disguised token integration attempts for schools ignores

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[34] Compare, *Pasadena City Board of Education, supra; Dayton I, supra, Calhoun* v. *Cook, supra; Lee* v. *Eufaula City Board of Education, supra; Columbus Board of Education* v. *Penick, supra;* and, *School District of Omaha* v. *U.S., supra.*

[35] See *South Park Independent School District* v. *U.S., supra,* (Rehnquist, Jr., dissenting):

> "So far as I can tell from the remand order of the Court of Appeals, the District Court appears condemned to a fate akin to that of Sisyphus, the mythical King of Corinth who was sentenced by Zeus to an eternity in Hades trying 'to roll a rock uphill which forever rolled back upon him.' Such a result, in my view, represents a departure 'from the accepted and usual course of judicial proceedings' sufficient to warrant a grant of certiorari pursuant to our Rule 19(1)(b)." (footnote deleted) 58 L.Ed2d at 686.

the objective of the remedy, i.e. to transform formerly segregated schools into a unitary system ". . . within which no person is . . . effectively excluded from any school because of race or color". *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969); *Northcross* v. *Board of Education of Memphis*, 397 U.S. 232, 239 (1970).

This Court has made it evident that the expansive approach of the Court of Appeals here is improper because:

> "One vehicle can carry only a limited amount of baggage. It would not serve the important objective of Brown I to seek to use school desegregation cases for purposes beyond their scope, although desegregation of schools ultimately will have impact on other forms of discrimination." *Swann, supra* at 22-23.

Contrary to the implications of the Sixth Circuit ruling, a pupil reassignment component of a desegregation plan ". . . does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools". *Swann, supra* at 23. Therefore, the Sixth Circuit's preoccupation with a remedy for *residential patterns* by construing them *de hors* the record as a "vestige" of now discontinued prior *school* segregation is a flagrant assault on this Court's directive to the federal courts:

> "Our function as stated by Mr. Justice White, is 'to desegregate an *educational* system in which the races have been kept apart without, at the same time, losing sight of the central *educational* function of the schools' *Milliken I, supra* . . ." *Milliken II, supra* at 280, n. 15.

The Sixth Circuit's willingness to employ token integration, disrupt the educational processes and endanger the stability of the present unitary system in Detroit, demonstrates that the Court, in its blind pursuit of a remedy for "residential vestiges", has indeed lost sight of the central "educational" function of both schools and desegregation remedies.

To this extent, the decision of the Sixth Circuit is in conflict with prior decisions of this Court and with other federal courts of appeals on the same matter, thus warranting review on certiorari.

F. The Sixth Circuit Erred By Improperly Ordering A Hearing To Determine The Racial Classification Of Hispanics

The *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973), definition of "hispano" states:

> ". . . 'Hispano' is the term used by the Colorado Department of Education to refer to a person of Spanish, Mexican, or Cuban heritage. Colorado Department of Education Human Relations in Colorado, A Historical Record 203 (1968). In the Southwest, the 'Hispanos' are more commonly referred to as "Chicanos' or 'Mexican-Americans' . . ." *Keyes, supra,* at 196, n.6.

This definition of Hispanos is no way conditioned upon discrimination for or against Hispanos in education.

In holding that Hispanic students "must be grouped with blacks rather than whites . . ." *only* when and if it "appears" that Hispanics have been discriminated against historically by the school system, the Sixth Circuit totally ignored the *Keyes* finding that the historical discrimination, if any, was no more than one of the consequences of Hispanic similarity with blacks in two specific areas, i.e. (1) ". . . Hispanics suffer from the same educational inequities" and (2) ". . . economic and cultural deprivation and discrimination". No hearing or factual findings are necessary to conclude, as a matter of law, that Hispanics should *not* be treated as white in this case. See *Keyes, supra* at 197-198.[36]

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[36] Cf., Native Americans in *Booker* v. *Special School District No. 1*, 585 F.2d 347 (CA 8 1978); *U.S.* v. *Antelope*, 430 U.S. 641 (1977); *Moe* v. *Confederated Tribes*, 425 U.S. 463 (1976); *Fisher* v. *Dist. Court*, 424 U.S. 382 (1976); *Morton* v. *Mancari*, 417 U.S. 535 (1974).

As a factual and biological matter, Hispanic students may be treated as non-white or non-black because Hispanos are a distinct biological and racial classification separate and apart from whites and blacks. They are, like blacks, an ethnic minority which suffers from the same discrimination and disadvantages as blacks when compared to whites. *Keyes, supra,* 197-198.

The presence or absence of segregation does not change the color of a person's skin or their ethnic origin. This court has consistently:

> ". . . held that Hispanos constitute an identifiable class for purposes of the Fourteenth Amendment. *Hernandez* v. *Texas,* 347 U.S. 475, . . . (1954). See also *United States* v. *Texas Education Agency,* 467 F.2d 848 (C.A. 5, 1972) (en banc); *Cisneros* v. *Corpus Christi Independent School District,* 467 F.2d 142 (C.A. 5, 1972) (en banc); *Alvarado* v. *El Paso Independent School District,* 455 F.2d 1011 (C.A. 5, 1971); *Soria* v. *Oxnard School District,* 325 F. Supp. 155 (C.D. Cal., 1971); *Romero* v. *Weakley,* 226 F.2d 399 (C.A. 9, 1955)." *Keyes, supra,* at 197.

Hispanics have been treated separately from "white" students in other desegregation cases without the necessity of establishing prior segregation. In *Evans* v. *Buchanan,* 416 F.Supp. 328, 359-360 (D Del 1976) and in *Morgan* v. *Kerrigan,* 401 F.Supp. 216, 242 (D Mass 1975), *aff'd,* 530 F.2d 401 (CA 1) *cert denied sub nom, White* v. *Morgan,* 426 U.S. 935 (1976), the district courts ordered desegregation plans which would assure that "other minority" students, such as Hispanics, would not be involved in excessive dispersal from bilingual education programs, and would not be aggregated with black students.

The color of Hispanic skin may well be a factor in determining whether a school is segregated or not, but the presence or absence of segregation in a school does not determine

whether Hispanics are black or white . . . they are neither. *Keyes, supra* at 198.

Hispanics do not have to litigate the fact that they are a "minority" group and the Sixth Circuit requirement to do so is error.

VI. CONCLUSION

This case does not simply demand a restatement of established principles. It requires the pronouncement of considerations relevant to framing a remedy in a desegregation suit.

For all of the compelling reasons stated above, it is respectfully submitted that a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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DATED: July 4, 1980
Detroit, Michigan

APPENDIX

OPINION OF THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT OF APRIL 14, 1980

Nos. 78-1597 and 79-1005

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RONALD BRADLEY, ET AL.,
Plaintiffs-Appellees,

v.

WILLIAM G. MILLIKEN, GOVERNOR, ET AL.,
Defendants-Appellees,

and

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, ET AL.,
Defendants-Appellants.

APPEAL from the United States District Court for the Eastern District of Michigan.

Decided and Filed April 14, 1980.

Before EDWARDS, Chief Judge, and PHILLIPS and PECK, Senior Circuit Judges.

PHILLIPS, Senior Circuit Judge. On July 25, 1974, the Supreme Court remanded this case to the district court for "prompt formulation of a decree directed to eliminating the segregation found to exist in Detroit city schools, a remedy

which has been delayed since 1970." *Milliken* v. *Bradley*, 418 U.S. 717, 753 (1974) (*Milliken* I). Nearly six years have elapsed since that remand, and almost ten years since this litigation began, yet we are unable to hold on the record before us that de jure segregation has been eliminated from the Detroit school system. We conclude that we must send the case back to the district court for further proceedings.

The present appeal presents four questions for decision: (1) Did the district court err in holding the population and demographic changes in Detroit have obliterated all traces and effects of past acts of discrimination by the Detroit School Board and the State of Michigan? Part II of this opinion rejects the ruling of the district court as contrary to the law of this case and clearly erroneous. (2) Was the district court correct in holding that the overwhelming percentage of black students in the Detroit school system precludes including in the pupil assignment plan any of the schools in the three inner-city regions of the school district? Part III of this opinion concludes the district court's holding was error, and outlines the standards to be applied by the district court when it reconsiders inner-city pupil reassignment on remand. (3) Was it error for the district court to order additional pupil reassignments between schools in Regions 1 and 2? Part IV of the opinion affirms in principle the propriety of additional pupil reassignments, but remands the case for a hearing on the question whether Hispanic students should be treated as white for desegregation purposes. (4) Did District Judge Robert E. DeMascio abuse his discretion in declining to recuse himself from the remand proceedings in this case? Part V finds no abuse of discretion, but suggests, in view of the bitter feelings that have developed, that the case be reassigned to another judge on remand from this court's decision on the present appeal.

I

This protracted litigation began in 1970. On April 7 of

that year, the Detroit Board voluntarily adopted a modest plan to desegregate some of the Detroit high schools. The State legislature, however, blocked implementation of that plan by enacting § 12 of Act No. 48, Public Acts of 1970. A citizen-initiated recall election resulted in the replacement of the four Board members who had favored the April 7 plan, and the reconstituted Board rescinded the plan.

The plaintiffs filed this suit on August 18, 1970, alleging that § 12 of Act No. 48 was unconstitutional and praying for a preliminary injunction requiring the Board to implement the April 7 plan. The late District Judge Stephen J. Roth denied plaintiffs' application for a preliminary injunction and they appealed. This court held § 12 of Act No. 48 unconstitutional, but affirmed the denial of a preliminary injunction and remanded for a trial on the merits. 433 F.2d 897 (6th Cir. 1970). On remand, Judge Roth again refused to grant a preliminary injunction, and this court affirmed, again directing a trial on the merits. 438 F.2d 945 (6th Cir. 1971).

The case was tried on the issue of segregation April 6, 1971, to July 22, 1971. On September 27, 1971, Judge Roth issued his ruling on the issue of segregation, finding both the State of Michigan and the Detroit Board[1] had committed "acts which have been causal factors in the segregated condition of the public schools in the City of Detroit," 338 F.Supp. 582, 592 (E.D. Mich. 1971).

Judge Roth determined that true desegregation could not be accomplished within the geographical limits of Detroit. Distributing the relatively small number of white students

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[1] Nothing in this opinion is intended to reflect adversely upon the present Detroit Board of Education. Throughout the course of this often bitter litigation members of the present Board have cooperated with the district court's endeavor to remedy the unconstitutional de jure segregation created by acts and policies of their predecessors and former State officials. References in this opinion to the Board's discriminatory acts should be read as references to the actions of past, not present, Board members.

remaining in the district throughout the schools, he held, would render the entire system identifiably black. Accordingly, he ordered the defendants to submit metropolitan plans for desegregation. 345 F. Supp. 914 (E.D. Mich. 1972).

This court, sitting en banc, affirmed both the finding of de jure segregation and the propriety of an interdistrict remedy. 484 F.2d 215 (6th Cir. 1973).

The Supreme Court granted certiorari and reversed in part. The Court held the district court had no equitable power to include in its remedial decree any school district whose racial composition had not been shown to be the product of de jure segregation. The defendants did not, however, challenge the district court's finding of de jure segregation within the city of Detroit. Accordingly, the Court remanded the case for formulation of a Detroit-only remedial decree. 418 U.S. 717 (1974) (*Milliken* I).

Judge Roth had died shortly before the Supreme Court issued its opinion, and District Judge Robert E. DeMascio was assigned the difficult task of formulating a decree which would eliminate the effects of de jure segregation from the Detroit school system without transgressing the limits set by the Supreme Court in *Milliken* I. Judge DeMascio required the parties to submit desegregation plans, but rejected them as unsatisfactory. His August 15, 1975 opinion, reported at 402 F. Supp. 1096 (E.D. Mich. 1975), established guidelines to be met by an acceptable remedial plan. Hereafter, they are referred to as the August 15 guidelines.

On November 4, 1975, Judge DeMascio adopted a desegregation plan drafted by the Detroit Board in an effort to conform to the August 15 guidelines. 411 F.Supp. 943 (E.D. Mich. 1975). This plan provided for changes in pupil assignments in five of the eight administrative regions of the Detroit school district, excluding inner-city Regions 1, 5 and 8 which are overwhelming black. In addition, the remedial decree provided for various Educational Components, requiring establishment of certain training, remedial, testing, counseling, monitoring and public relations programs.

This court affirmed the remedial decree's Educational Components and the portion of the pupil reassignment plan that required reassignments within Regions 2, 3, 4, 6 and 7. We found that excluding Regions 1, 5 and 8 from the pupil reassignment plan left approximately 83,000 students with no relief from unconstitutional de jure segregation. Moreover, we noted, these three Regions are in the area most affected by the previously found illegal acts. This being the case, the Board had assumed the burden of showing that the segregation existing in Regions 1, 5 and 8, which were excluded from the plan, was not the result of the defendants' present or past discriminatory actions. Since the record disclosed no adequate justification for limiting the pupil reassignment plan to five Regions, we remanded the case for further consideration in regard to schools located in the inner-city Regions. 540 F.2d 229 (6th Cir. 1976).

The Supreme Court affirmed the propriety of the decree's Educational Components, and their validity no longer is an issue in this case. Neither the district court's pupil reassignment plan nor this court's partial reversal was challenged in the Supreme Court, and it had no occasion to rule thereon. 433 U.S. 267, 279 (1977) (*Milliken* II).

Before the district court commenced remand proceedings, the plaintiffs moved Judge DeMascio to recuse himself from the case. Relying on 28 U.S.C. § 455(a) and Canon 3A(4) of the Code of Judicial Conduct, the plaintiffs complained that Judge DeMascio had created an appearance of partiality by engaging in *ex parte* contacts with experts, community groups and the Detroit Board in the process of developing his desegregation guidelines and remedial decree. Judge DeMascio declined to recuse himself. 426 F.Supp. 929 (E.D. Mich. 1977). However, he referred to the Chief Judge of the District the question whether his prior conferences with the Detroit Board and the teachers' union aimed at averting a strike, coupled with his August 28, 1975, order directing faculty reassignments, had created the appearance that he had prejudged the faculty assignment issue. On referral from the

Chief Judge, District Judge James P. Churchill agreed with Judge DeMascio that recusal was not required. 426 F.Supp. at 943-44.

On the merits, Judge DeMascio reaffirmed his prior conclusion that Regions 1, 5 and 8 need not and cannot be included in the pupil reassignment plan. 460 F. Supp. 299 (E.D. Mich. 1978). He held that pronounced demographic shifts, together with the predominance of the black student population, have obliterated the effects of defendants' prior acts of de jure segregation. Current residential patterns, not school assignments, he said, account for the one-race character of the inner-city schools. Accordingly, Judge DeMascio held that the present assignment pattern is free from the vestiges of prior discrimination and that the Board had borne its heavy burden of justifying the exclusion of the inner-city regions from the pupil reassignment plan. 460 F. Supp. at 307-08.

Nevertheless, the court found there were some white students available in Region 2 to desegregate certain Region 1 schools. The Board objected that many of these white students were Spanish dominant Hispanics involved in bilingual educational programs that would be disrupted by additional pupil reassignments. However, Judge DeMascio felt this court's opinion mandated whatever reassignments were possible, despite any burden on bilingual programs. 460 F. Supp. at 312. In a supplemental opinion, Judge DeMascio ordered the Detroit Board to develop a plan for reassigning pupils between Regions 1 and 2 which would provide for bilingual education in receiving schools. On November 11, 1978, the court adopted the Board's responsive plan. 460 F. Supp. 325 (E.D. Mich. 1978).

The Detroit Board appeals on the ground that the district court exceeded its authority by ordering additional pupil reassignments between Regions 1 and 2. The plaintiffs cross-appeal from Judge DeMascio's decision not to recuse himself, his holding that demographic changes have obliterated the effect of defendants' prior discriminatory acts, and his conclusion that Region 1, 5 and 8 were properly excluded from

the pupil reassignment plan. This court stayed implementation of the additional reassignment plan pending the outcome of this appeal.

II

The first question we address is whether Judge DeMascio was correct when he decided that demographic changes and the growth of the Detroit school system's proportion of black students have obliterated the effects of defendants' past discriminatory actions. We conclude that this holding of the district court is refuted overwhelmingly by the record.

Judge DeMascio's conclusion apparently was based on his belief that the only effect of defendants' past discriminatory actions was to allow white students to escape from integrated schools in racially changing residential areas:

> This was so because the actions which formed the basis for Judge Roth's liability findings were basically reactions by the Detroit Board of Education to changing residential patterns. The optional and gerrymandered attendance zones served the purpose of keeping white students out of schools that, in the absence of such policies, would have become, and in fact have become, integrated naturally. Judge Roth did not find, however, that these policies in turn created additional residential segregation which in turn created additional school segregation. Had he made such findings, and had such findings been supported in the record, we assume the Supreme Court would have affirmed the propriety of an interdistrict remedy.
>
> 460 F. Supp. at 307-08.

Accordingly, Judge Demascio thought the defendants' actions could have had only temporary segregative effects, effects that had been nullified by the almost total displacement of whites from formerly integrated neighborhoods;

> These pronounced demographic shifts, first predicted by Judge Roth, and the predominance of the black student population have obliterated the optional and gerrymandered attendance zones which permitted white students to avoid attending integrated schools, the practice of bussing black students from overcrowded schools beyond a closer white school and the practice of altering feeder patterns in racially changing neighborhoods.
>
> (Footnote omitted.) 460 F. Supp. at 307.

The problem with this conclusion of the district court is that it is contrary to the law of this case as established by Judge Roth and affirmed by this court and by the Supreme Court in *Milliken* I.

Judge Roth found that the Detroit Board had done at least four things to maintain a dual school system in Detroit: First, during the 1950's, the Board "created and maintained optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions." 338 F. Supp. at 587. "The natural, probable, foreseeable and actual effect of these optional zones was to allow white youngsters to escape identifiably 'black' schools." *Id.* Second, the Board "admittedly bused black pupils past or away from closer white schools with space available to black schools," but only in one instance, necessitated by the burning of a white school, did the Board bus white children to a black school. 338 F.Supp. at 588. Third, the Board "created and altered attendance zones, . . . grade structures and . . . feeder school patterns in a manner which . . . [maintained] black and white pupils in racially segregated schools." *Id.* Finally, by constructing many small schools and locating new schools in areas of one race, the Board negated opportunities to integrate, contained the black population, and compounded school segregation. *Id.*

The plaintiffs presented evidence that the Board's discriminatory actions affected not only schools but residential pat-

terns. For example, in affirming Judge Roth's finding of de jure segregation, this court quoted the following exchange between plaintiffs' counsel and Dr. Gordon Foster of the University of Miami, director of the Florida School Desegregation Consulting Center, concerning optional attendance zones:

> "Q. Doctor Foster, from your examination of the 1950 census and in turn the 1960 census exhibits, do you have an opinion as to the effect of such an optional zone on the community residence pattern in the community?
>
> • • •
>
> "A. Community people and residents in a situation such as this generally have a perception that there is something wrong with their school, that the whites need an optional zone to get out into a less black situation and, therefore, this increases their perception of racial isolation and, in fact, physical containment.
>
> "Q. Does this have an effect, Doctor, in terms of the residence pattern? I believe you testified in 1950 the optional area was entirely white to zero to 4.9 percent white.
>
> • • •
>
> "A. In my opinion this tends to increase the instability of the community because they generally feel this is an ad hoc temporary interim situation and it increases white flight in this sort of situation.
>
> 484 F.2d at 234.

At another point, Dr. Foster testified that locating new schools in one race areas rather than integrated areas tends to isolate the new school's attendance zone and perpetuate its racial identity. 484 F.2d at 238.

Responding to this and other evidence, Judge Roth found the Board's discriminatory policies were partially responsible for segregated residential patterns:

> Governmental actions and inaction at all levels, federal, state and local, have combined, with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area.
>
> . . . [A]ll of them, including the school authorities, are, in part, responsible for the segregated condition which exists. And we note that just as there is an interaction between residential patterns and the racial composition of the schools, so there is a corresponding effect on the residential pattern by the racial composition of the schools.
>
> 338 F. Supp. at 587.

See also Judge Roth's seventh conclusion of law, 338 F. Supp. at 593.

In affirming Judge Roth's findings on the issue of segregation, we stated:

> This record contains a substantial volume of testimony concerning local and State action and policies which helped produce residential segregation in Detroit and in the metropolitan area of Detroit. In affirming the District Judge's findings of constitutional violations by the Detroit Board of Education and by the State defendants resulting in segregated schools in Detroit, we have not relied at all upon testimony pertaining to segregated housing except as *school construction programs helped cause or maintain such segregation.*
>
> 484 F.2d at 242 (emphasis supplied).

See also Milliken I, *supra*, 418 U.S. at 724 and 728 n.7 (acknowledging Judge Roth's and this court's partial reliance on de jure school segregation as one cause of residential segregation).

Moreover, Judge Roth's conclusion that present Detroit housing patterns reflect the Board's past discrimination ac-

cords with the analysis of the Supreme Court in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 20-21 (1971):

> The construction of new schools and the closing of old ones are two of the most important functions of local school authorities and also two of the most complex. They must decide questions of location and capacity in light of population growth, finances, land values, site availability, through an almost endless list of factors to be considered. The result of this will be a decision which, when combined with one technique or another of student assignment, will determine the racial composition of the student body in each school in the system. Over the long run, the consequences of the choices will be far reaching. People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner-city neighborhoods.
>
> In the past, choices in this respect have been used as a potent weapon for creating or maintaining a state-segregated school system. In addition to the classic pattern of building schools specifically intended for Negro or white students, school authorities have sometimes, since *Brown,* closed schools which appeared likely to become racially mixed through changes in neighborhood residential patterns. This was sometimes accompanied by building new schools in the areas of white suburban expansion farthest from Negro population centers in order to maintain the separation of the races with a minimum departure from the formal principles of "neighborhood zoning." Such a policy does more than simply influence the short-run composition of the student body of a new school. It may well promote segregated residential patterns which, when combined with "neighborhood zoning," further lock the school system into the

> mold of separation of the races. Upon a proper showing a district court may consider this in fashioning a remedy.

See also Adams v. *United States,* — F.2d —, slip op. at 34 (8th Cir. Mar. 3, 1980) (massive demographic shifts that have rendered the St. Louis school district 75 per cent black have incorporated rather than wiped out the segregative effects of the system's prior de jure discriminatory policies: "public perception of the racial identity of a school can be, and often is, a powerful factor in shaping the residential patterns of a neighborhood").

In *Keyes* v. *School District No. 1,* 413 U.S. 189 (1933), the Supreme Court held that the discriminatory practices of a school district may have the effect of earmarking a school according to its racial composition, and this, in turn, may have a profound reciprocal effect on the racial composition of residential neighborhoods. The Court said:

> "[T]he practice of building a school . . . to a certain size and in a certain location 'with conscious knowledge that it would be a segregated school,' . . . has a substantial reciprocal effect on the racial composition of other nearby schools. So also, the use of mobile classrooms, the drafting of student transfer policies, the transportation of students, and the assignment of faculty and staff, on racially identifiable bases, have the clear effect of earmarking schools according to their racial composition, and this, in turn, together with the elements of student assignment and school construction, may have a profound reciprocal effect on the racial composition of residential neighborhoods within a metropolitan area, thereby causing further racial concentration within the schools."
>
> 413 U.S. at 201-02.

The clear import of Judge Roth's holding is that the defendants' discriminatory policies helped to drive whites from the Detroit school district and to contain blacks in an ever-

expanding core area of the city. Viewed in this light, Judge DeMascio's holding, urged by the Board before this court, is that the segregative effects of the defendants' discriminatory policies have been obliterated by the very demographic changes those policies helped to produce. We conclude that this argument refutes itself.

It is the law of this case that the unconstitutional actions of defendants, both local and State, contributed to the segregated residential patterns and the one race schools that now exist in Detroit. Judge Roth found that de jure school segregation encouraged whites to flee from racially changing neighborhoods and ultimately from the Detroit school district. That finding is supported by substantial record evidence and ample legal precedent. This being so, we reverse Judge DeMascio's holding that population changes have obliterated the effects of the Board's past discrimination. This holding is contrary to the law of this case and, treated as a finding of fact, is clearly erroneous. On the contrary, the record demonstrates that these population changes themselves are in part vestiges of past discrimination.

III

We turn our attention next to the holding of the district court that the overwhelming percentage of black students in the school district as a whole and particularly in the inner-city regions, coupled with the small number of white students even theoretically available for reassignment, foreclose the possibility of including any schools located in Regions 1, 5 and 8 in the pupil reassignment plan. We find this holding constitutionally insupportable.

The last time this case was before us, we reversed the exclusion by the district court of the inner-city regions from the pupil reassignment plan. We recognized then that "the overwhelming number of black students in Detroit and their concentration in the inner-city undoubtedly makes some one-race schools unavoidable under any 'Detroit only' remedy."

540 F.2d at 237. However, in order to justify eliminating the inner-city regions entirely, we said, the Board would have to show the resultant all black schools are not the product of past discrimination. This would be particularly diffiicult, we warned, because these very regions were the ones hardest hit by past acts of de jure segregation. 540 F.2d at 238. "We cannot hold," we concluded, "that where unconstitutional segregation has been found, a plan can be permitted to stand which fails to deal with the three regions where the majority of the most identifiably black schools are located." 540 F.2d at 240.

On remand, the Detroit Board attempted to justify its exclusion of Regions 1, 5 and 8 by presenting evidence that the shift from white to black in the district had accelerated well beyond former demographic predictions and made inner-city desegregation impossible. The Board's figures established that the percentage of black students in the district is increasing despite a decline in the total enrollment. Of the children who enter Detroit kindergartens, a greater proportion of blacks than whites remain in the system throughout their school years. Mr. Hendrickson, the Board's expert, projected the district's enrollment would be 91.8% black by 1981. Moreover, the district court found, residential areas near the school district's fringe are becoming increasingly black as inner-city families replace whites who leave the district entirely. 460 F. Supp. at 305-07.

Judge DeMascio felt the Board's evidence established that no more desegregation of Regions 1, 5 and 8 is possible. 460 F. Supp. at 307. He concluded that integrating the inner-city schools would require the Board to scatter the remaining white students to such an extent that there would be no meaningful interaction between the races in any school. The result would be mere token integration of the inner-city schools achieved at the cost of disrupting previously approved assignment patterns that effectively desegregate the schools in other regions.

To illustrate the futility of attempting to include the inner-city regions, Judge DeMascio turned to statistics. Pointing out that the district court had repeatedly rejected the notion of making all schools identifiably black, Judge DeMascio held that only the excess of non-black over black students in any given school could be considered available for reassignment to schools in Regions 1, 5 and 8. The Board's evidence showed there were 31 majority white elementary schools in the district with 3397 students available for reassignment. Six middle schools had 733 students available and one high school had 175. However, the Board's evidence also showed the black enrollment in inner-city elementary schools was 38,259 or 11 times the number of whites available for reassignment. The comparable figures for inner-city middle and high schools were 17,015 and 17,783, or 23 times and 100 times the respective numbers of white students available for reassignment. 460 F.Supp. at 310. Accordingly, the court found, to disperse these few available white children among the schools in Regions 1, 5 and 8 would accomplish nothing more than token integration, a result this court had previously rejected. 460 F. Supp. at 310, citing 540 F.2d at 239.

The flaw in the district court's logic was its assumption that Regions 1, 5 and 8 must be treated as units, and that integrating schools in these Regions must be an all-or-nothing proposition. From the outset of this litigation's post-*Milliken* I remedial phase, Judge DeMascio seems to have assumed that the inner-city regions must be treated in isolation from the rest of the district. *See, e.g.*, 402 F. Supp. at 1129 (holding that the negligible benefits of including the inner-city do not justify "the extraordinary remedy of such cross-regional bussing"). Yet it was exactly this unitary treatment of Regions 1, 5 and 8 that led us to reverse and remand the last time this case was before us. Citing *Davis* v. *Board of Commissioners of Mobile County*, 402 U.S. 33, 38 (1971), in which the Supreme Court refused to permit isolated treatment of one part of metropolitan Mobile, we found it "equally unacceptable to

treat Regions 1, 5 and 8 in isolation from the rest of the Detroit school system." 540 F.2d at 238.

We see no reason to treat the borders of the Detroit school system's inner-city administration regions as sacrosanct. In the first place, Detroit's regional scheme of school administration originated with Act No. 48, Public Laws of 1970, the same law whose § 12 we found to be an unconstitutional interference with the Board's attempts to desegregate Detroit high schools. Were we to view the Act's remaining provisions as creating barriers to constitutionally required desegregation, we would have to hold them unconstitutional also. *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484, 489 (1972); *Wright* v. *Council of the City of Emporia*, 407 U.S. 451, 461-62 (1972). Furthermore, there is nothing in the Supreme Court's holding in *Milliken* I, *supra*, 418 U.S. at 745-46, that renders inviolable the lines of Administrative Regions within the Detroit School District. Judge Roth's ruling that the Detroit Board carried out a systematic program of segregation established a predicate for finding a dual school system in all the regions. *See Keyes* v. *School District No. 1, Denver, Colo.*, 413 U.S. 189, 201 (1973). In such a situation, a district court may disregard the boundaries of administrative regions in order to vindicate constitutional rights. *Milliken* I, *supra*, 418 U.S. at 745.[2]

The district court erred when it held that Regions 1, 5 and 8 must be excluded in their entirety from the pupil reassignment plan. The proper inquiry after this court's last remand was not whether there are enough white students available to desegregate *every* inner-city school. This court has recognized from the first that some one race schools are unavoidable under a Detroit-only plan. *See* 540 F.2d at 237; 484 F.2d

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[2] In fact, Judge DeMascio's remedial guidelines specified that, when the Board attempting rezoning to achieve integration in other regions without transporting students, "regional lines need not be respected; when the choice is between preserving regional lines and bussing, regional lines must give way." 402 F.Supp. at 1134.

at 249. It, therefore, is irrelevant that there are 11 times as many black students in all the inner-city elementary schools combined as there are white students available for reassignment. What is crucial is whether those 3,397 white students can practically be reassigned to achieve effective levels of desegregation in *some* of the inner-city schools. That, and the analogous questions concerning the middle and high schools, are the issues the district court should have addressed and is directed to address on remand from this decision. The small number of white students available for reassignment and the problems involved in transporting them may justify excluding some, and perhaps many, inner-city schools from the pupil reassignment plan. We emphasize that the need to cross regional lines does not justify such exclusion.[3]

On remand, the district court should apply substantially its August 15, 1977, remedial guidelines, 402 F. Supp. 1096, 1134, *supra*, but without regard to the boundary lines of administrative regions. White students should be considered available for reassignment only to the extent exchanging them with pupils from inner-city schools will not render formerly integrated school identifiably (more than 55 per cent) black. Where practicable, attendance zones should be redrawn across regional lines to include inner-city pupils in integrated schools. Where rezoning is impossible, as we anticipate it will be in most instances, schools with white students available for re-

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[3] The decision of the district court to treat the inner-city regions as units and to exclude them entirely from the reassignment plan distinguishes this case from *Calhoun* v. *Cook*, 522 F.2d 717 (5th Cir. 1975), *rehearing denied*, 525 F.2d 1203 (1975). The *Calhoun* court refused, in light of Atlanta's 85 per cent black student population, to order further pupil reassignments even though 92 of the system's 148 schools were over 90 per cent black. However, there is no indication those 62 identifiably black schools were concentrated in one or several administrative regions left wholly untouched by the pupil reassignment plan. Moreover, if we were convinced that the Fifth Circuit permitted Atlanta's desegregation plan to be limited by intra-district administrative lines, we would be forced to disagree with its decision.

assignment should be paired with the closest feasible inner-city school. In order to achieve effective levels of desegregation, it may be necessary to pair several white schools with a single black school. Such pairing should be done with a view toward minimizing the amount of transportation required. In some situations, it may be that the small number of white students available for reassignment from a particular school, coupled with the distance they would have to be transported to reach an inner-city school that can be paired with other white schools, will justify maintaining present assignment patterns.

We emphasize that this remand is not intended to disrupt previously approved assignment patterns. As we said the last time this case was before us, "the steps which [the district court] has taken thus far appear to us to be consistent with the fourteenth amendment." 540 F.2d at 240. The district court's error was its failure to apply its remedial guidelines to schools in all the regions. Doing so may well achieve at least some additional desegregation, and it is for this purpose that we are remanding.

Nor are our remand instructions intended to be a straight jacket on the district court. We recognize that the district court must balance a variety of individual and collective interests in an effort to arrive at "a plan that promises realistically to work . . . *now*." *Green* v. *County School Board*, 391 U.S. 430, 439 (1968). Flexibility is essential to that end.

Our last opinion in this case mirrored our frustration at our inability to chart a course that would guide the district court to desegregate the entire school district:

> We recognize that it would be appropriate for us at this point to supply guidelines to the District Judge as to what he should do under this remand. Omission of such guidelines is not based on any failure to consider the problem in depth. It is based upon the conviction which this court had at the time of its en banc opinion in this case – and for the reasons carefully spelled out therein – that gen-

> uine constitutional desegregation can not be accomplished within the school district boundaries of the Detroit School District.
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> 540 F.2d at 240.

The district court, however, apparently interpreted the above-quoted comment as a recognition by this court that effective pupil reassignments cannot be achieved in *any* of the schools in the three inner-city regions. *See* 460 F.Supp. at 304. Our comment was not so intended and should not be so read. Although genuine constitutional desegregation may be impossible within the Detroit district, this court has the obligation to see that all practicable steps are taken to remedy the unconstitutional segregation that has been found to exist. To that end, the district court's exclusion of all schools in Regions 1, 5 and 8 from the pupil reassignment plan is reversed and the cause remanded for further consideration in light of this opinion.

IV

Despite his conclusion that "no more desegregation is feasible in Regions 1, 5 and 8 collectively," 460 F. Supp. at 307, Judge DeMascio determined there are white students in Region 2 available for reassignment to Region 1 schools. 460 F. Supp. at 311-12. Accordingly, he ordered the Detroit Board to prepare a supplemental pupil reassignment plan. The Board argues the district court exceeded its authority by requiring further reassignments. We reject that argument. However, we vacate the court's order and remand the case for a hearing on the question whether Hispanic students should be treated as white for desegregation purposes.

The district court found Region 2 is unique among Detroit's administrative regions in that it has not experienced much growth since 1974 in the percentage of its students who are black. Indeed, the court found, some Region 2 schools had fewer black students in 1977 than in 1974. 460 F. Supp. at

311. Overall, black students accounted for only 62% of the Region's 1977 enrollment. Furthermore, fourteen elementary schools in Region 2 had a total of 2145 white students available for reassignment. Thus, the court concluded, numbers alone pose no obstacle to reassigning Region 2 whites to Region 1 schools. *Id.*

Judge DeMascio apparently felt the concentration in Region 2 of programs of bilingual education for Spanish dominant children accounted for the relatively slow growth of the black enrollment in that Region. We agree with the plaintiffs that restricting bilingual programs to one region provides Hispanic families not only with neighborhood schools but with an incentive to concentrate in that region. This artificial concentration of Hispanic whites, the district court found, in turn prevents the natural influx of black families and so contributes to resegregation of Region 2. 460 F.Supp. at 312. To counteract this resegregative trend and to comply with the mandate of this court that inner-city schools be desegregated, the district court ordered the Board to develop a plan for reassigning pupils between schools in Regions 1 and 2.

The Detroit Board advances three reasons the district court's order should be overturned. First, the Board says, the Detroit school system is now unitary and the district court had no authority to order further reassignments. Second, even if the system is not yet unitary, reassigning Spanish-dominant students to Region 1 schools will disrupt State required bilingual educational programs while achieving only token integration. Third, the Board says, Hispanic students cannot be treated as white for desegregation purposes. We deal with these arguments seriatim.

The Board's first argument depends on Judge DeMascio's holdings that "the school district no longer discriminates against black students," and that "its present assignment pattern is free from the vestiges of prior discrimination." 460 F. Supp. at 308. The case is therefore controlled by *Pasadena City Board of Education* v. *Spangler,* 427 U.S. 424 (1976), the

Board says. *Pasadena* held a district court has no authority to order annual readjustments of attendance zones to compensate for demographic changes that occur after a racially neutral attendance pattern has been achieved. Since its assignment plan is racially neutral, the Board says, the district court had no authority to order further modification.

The short answer to this argument is that a racially neutral assignment plan does not necessarily achieve a racially neutral attendance pattern. The Board's plan is limited by residential patterns which reflect past discrimination, as well as by district lines and transportation problems. As the Supreme Court recognized in *Swann* v. *Charlotte-Mecklenburg Board of Education, supra,* 402 U.S. at 28:

> The objective is to dismantle the dual school system. "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. * * *
>
> In short, an assignment plan is not acceptable simply because it appears to be neutral.

There are now 66,650 students attending schools in Regions 1, 5 and 8. The remedial measures implemented to date afford none of these students any relief from de jure segregation. Detroit is still far from achieving a racially neutral attendance pattern. This is not a *Pasadena* situation.[4] *See Adams* v. *United States, supra,* — F.2d —, slip op. at 36 (the failure of the St. Louis Board ever to adopt a desegregation plan to

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[4] In light of our holding that Detroit has not yet achieved a unitary system, we need not decide whether the concentration of bilingual programs in Region 2 is having a resegregative effect and, if so, whether that fact standing alone would empower the district court to order additional relief. *See Dayton Board of Education* v. *Brinkman,* 433 U.S. 406, 420 (1977) (Dayton I); *Washington* v. *Davis,* 426 U.S. 229 (1976).

compensate for segregated residential patterns makes *Pasadena* inapplicable).

The Board's second argument is that reassigning Spanish-dominant students to Region 1 schools will disrupt bilingual educational programs while achieving only token integration. Dr. Felix Valbuena, the Director of Bilingual Education for the Detroit school district, testified that reassigning Spanish speaking students currently enrolled in Region 2 bilingual programs would impede the Board's ability to develop a model program and train bilingual teachers; produce fear and anxiety for the students; limit community participation and interest in the schools; produce shortages of qualified bilingual teachers and necessary resource materials; and require the Board to adopt less efficient and effective methods of instruction. In return for this disrpution, the Board says, only 1600 students will be reassigned, achieving token integration of only five of the thirty-one Region 1 schools.

The Board's concern for the continued viability of its bilingual educational programs is commendable. Circumstances permitting, we might well agree that the desegregative benefits would not justify the disruption created by reassigning Spanish dominant students. Circumstances, however, do not so permit. We agree with the district court that when the choice is between maintaining optimal conditions in a bilingual educational program and desegregating all-black schools, desegregation must prevail. 460 F. Supp. at 312. *See Keyes* v. *Denver School District No. 1*, 521 F.2d 465, 480 (10th Cir. 1975), *cert. denied*, 423 U.S. 1066 (1976).

This brings us to the Board's third argument, that Hispanic students cannot be reassigned to desegregate identifiably black schools because such students are themselves minorities. In support of this argument, the Board cites *Keyes* v. *School District No. 1, Denver, Colo., supra*, 413 U.S. 189 (1973).

In the *Keyes* case, the Supreme Court found the school district's history of discrimination against Hispanic students justified treating those students as minorities for desegregation purposes:

> We conclude, however, that the District Court erred in separating Negroes and Hispanos for purposes of defining a "segregated" school. We have held that Hispanos constitute an identifiable class for purposes of the Fourteenth Amendment. * * * Indeed, the District Court recognized this in classifying predominantly Hispano schools as "segregated" schools in their own right. But there is also much evidence that in the Southwest Hispanos and Negroes have a great many things in common. The United States Commission on Civil Rights has recently published two Reports on Hispano education in the Southwest. Focusing on students in the States of Arizona, California, Colorado, New Mexico, and Texas, the Commission concluded that Hispanos suffer from the same educational inequities as Negroes and American Indians. In fact, the District Court itself recognized that "[o]ne of the things which the Hispano has in common with the Negro is economic and cultural deprivation and discrimination," 313 F.Supp., at 69. This is agreement that, though of different origins, Negroes and Hispanos in Denver suffer identical discrimination in treatment when compared with the treatment afforded Anglo students. In that circumstance, we think petitioners are entitled to have schools with a combined predominance of Negroes and Hispanos included in the category of "segregated" schools.
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> (Citations and footnotes omitted.) 413 U.S. at 197-98.

Similarly, the Fifth Circuit has treated Hispanic students as minorities for purposes of school desegregation. *See United States* v. *Midland Independent School District*, 519 F.2d 60, 63-64 (5th Cir. 1975), *cert. denied*, 424 U.S. 910 (1976); *Tasby* v. *Estes*, 517 F.2d 92, 106-07 (5th Cir.), *cert. denied*, 423 U.S. 939 (1975) and cases cited therein.

The common element justifying treatment of Hispanic students as minorities in the *Keyes*, *Midland*, and *Tasby* cases was each school system's history of de jure segregation of

Hispanos. In *Keyes*, the Supreme Court found "Negroes and Hispanos in Denver suffer identical discrimination." 413 U.S. at 198. In the *Midland* case, "the record clearly demonstrate[d] that the Midland School District deliberately segregated Mexican-Americans from Anglos." 519 F.2d at 62. The *Tasbly* court found record evidence "to establish the isolation of Mexican-American students in the [Dallas school system] and the [Dallas system's] practice of 'integrating' its Mexican-American students with black students." 517 F.2d at 106. Thus, it appears, in school systems that historically have discriminated against Hispanic students, those students must be grouped with blacks rather than whites for desegregation purposes.

Because there is no indication in the record whether, historically, the Detroit school district has discriminaed against Hispanic students, we are unable, on the present appeal, to affirm Judge DeMascio's decision that "for school assignment purposes Spanish-surnamed students cannot be treated differently than other white students." 460 F. Supp. at 312. On remand, the district court is directed to conduct a hearing on that issue.

Our remand for a hearing on this issue places the case in an unusual posture. In order for the Board to prevail in its contention that Hispanic students cannot be treated as white, it must prove it practiced de jure segregation of such students. However, doing so would compound the Board's problems because grouping Hispanos with blacks might require revision of the district court's remedial guidelines and a comprehensive review of previously approved assignment patterns, at least in Region 2. This being so, it is possible that the Board may not continue to assert its present position on remand.

Nor is any other party to the present litigation likely to argue there has been de jure segregation of Hispanic students. The position of plaintiffs in the district court was that concentrating bilingual programs in Region 2 provides neighborhood schools which in turn induce Hispanic families to move there. 460

F. Supp. at 312. The plaintiffs urged that this resegregative effect should be countered by reassigning some Hispanic students to Region 1 schools. Treating Hispanos as blacks for desegregation purposes would, of course, preclude such reassignments since the district court consistently has refused to reassign blacks to identifiably black schools. Thus, the plaintiffs have no incentive to argue Hispanos have been the victims of de jure segregation in Detroit. Similarly, the State of Michigan defendants, who may well have to share the Board's liability for remedial costs if the court finds de jure segregation of Hispanic students, seem unlikely to present evidence of discrimination.

Because none of the existing parties is likely to argue that Hispanic students have been victims of de jure segregation in Detroit, the district court is directed to permit individuals or organizations representing Detroit's Hispanic community to intervene in the remand proceedings for the limited purpose of presenting evidence on this issue. Our opinion in the related case, No. 78-1598, — F.2d — (6th Cir. 1980), recognizes the right of LULAC Council No. 11054, and its co-appellants to intervene in these remand proceedings solely on the issue of de jure segregation of Hispanos. Should other individuals or organizations also wish to intervene on behalf of the Hispanic community, the district court will determine under Fed. R. Civ. P. 24 whether their interests are adequately represented by LULAC Council No. 11054 et al.; additional intervenors need not be permitted unless their participation as parties will serve some useful purpose. We emphasize here, as in our opinion in No. 78-1598, that intervention will be limited to the issue of de jure segregation of Hispanic students in the Detroit school system.

Unless the district court finds the defendants discriminated against Hispanic students, it may treat such students as white for desegregation purposes. The court then would be free to order implementation of its previously approved reassignment plan for Hispanic students, or any modification thereof found

to be desirable. We suggest, however, that the district court permit LULAC Council No. 11054 et al. to participate as amici curiae in developing a reassignment plan that will achieve the maximum amount of desegregation possible without neglecting the bilingual educational needs of Hispanic students. Before any additional reassignments are implemented, including those contained in the previously approved plan of the district court for transporting Region 2 students to Region 1, they should be tested against the August 15, 1975, guidelines as modified by Part III of this opinion.

Accordingly, the district court's order directing the Board to implement additional pupil reassignments in Regions 1 and 2 is vacated. The cause is remanded for a hearing on the question whether Hispanic students should be treated as white for desegregation purposes and for other action consistent with the outcome of that hearing.

V

The final question we must address is whether Judge DeMascio erred in declining to recuse himself from the remand proceedings in this case. We hold he did not err.

Briefly, the plaintiffs argue Judge DeMascio violated 28 U.S.C. § 455(a) and Canon 3A(4) of the Code of Judicial Conduct by engaging in various *ex parte* contacts and discussions with court-appointed experts, community groups and representatives of the Detroit Board. In an opinion reported at 426 F. Supp. 929 (E.D. Mich. 1977), Judge DeMascio denied plaintiffs' motion for recusal.

28 U.S.C. § 455(a), as amended,[5] provides:

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[5] Section 455 was amended by the Act of December 5, 1974, Pub. L. No. 93-512, 88 Stat. 1609. Section 1 of that Act substituted the present subsection (a) for the former version which read:

> "Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or

§ 455. Disqualification of justice, judge, magistrate, or referee in bankruptcy

(a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

The plaintiffs complain that Judge DeMascio created the

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connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

There is agreement among the courts that the purpose of the amendment was to change the standard for recusal from a subjective to an objective one, as well as to overrule the prior concept that close cases involving disqualification should be resolved against recusal on the ground the judge has a duty to sit. *See e.g., United States* v. *Cowden,* 545 F.2d 257 (1st Cir. 1976), *cert. denied,* 430 U.S. 909 (1977); *Davis* v. *Board of School Commissioners of Mobile County,* 517 F.2d 1044 (5th Cir. 1975), *cert. denied,* 425 U.S. 944 (1976).

There is a split among the circuits, however, as to whether the amended version of § 455(a), with its objective standard, applies to post amendment proceedings in cases, such as this one, filed before the amendment's effective date. Section 3 of the amending act provided the amended version "shall not apply to the trial of any proceeding commenced prior to [Dec. 5, 1974] nor to appellate review of any proceeding which was fully submitted to the reviewing court prior to [that date] ." The Fourth and Eighth Circuits have held the amended version inapplicable to post amendment proceedings in cases filed before December 5, 1974. *In re Virginia Electric & Power Co.,* 539 F.2d 357 (4th Cir. 1976); *United States* v. *Dodge,* 538 F.2d 770 (8th Cir. 1976), *cert. denied,* 429 U.S. 1099 (1977). The Fifth Circuit has disagreed. *Potashnick* v. *Port City Construction Co.,* — F.2d —, 48 U.S.L.W. 2490 (5th Cir. Jan. 15, 1980); *Parrish* v. *Board of Commissioners of Alabama State Bar,* 524 F.2d 98 (5th Cir. 1975) (en banc), *cert. denied,* 425 U.S. 944 (1977). Judge DeMascio held the amended version of § 455(a) inapplicable in the present case. 426 F.Supp. at 932.

Because we think the actions of Judge DeMascio do not require recusal even under the section as amended, we need not decide which version applies to this case. Rather, we assume for purposes of this decision that the amended version of the statute applies.

appearance of partiality by meeting *ex parte* with the Detroit Board's representatives on August 15, 1975, even before plaintiffs' counsel had received a copy of the court's just filed remedial guidelines, to discuss an impending teachers' strike. The plaintiffs also argue Judge DeMascio engaged in what they term "negotiations" with the Board in developing a desegregation plan, a process from which they were excluded.

Judge DeMascio's opinion denying recusal discusses these complaints and his underlying actions in detail, and we need not recount them here. *See* 426 F. Supp. at 935-39. He characterized the incidents of which plaintiffs complain as "judicial activities designed to ensure a community climate receptive to the court's orders." 426 F. Supp. at 939. The so-called negotiation process was designed "to avoid the formality of an order," he said. *Id.* Concluding that his actions were "well within [his] discretion and based on substantial precedent," Judge DeMascio held § 455(a) did not require recusal. *Id.*

We agree. Although perhaps a bit unorthodox, Judge DeMascio's actions appear to us to have been judicial activities. To make out a case for recusal under § 455(a), a movant must rely on extra-judicial conduct rather than matters arising in a judicial context. *Davis* v. *Board of School Commissioners of Mobile County, supra,* 517 F.2d at 1052 (construing amended § 455(a) *in pari materia* with 28 U.S.C. § 144, the other federal disqualification statute). *See United States* v. *Grinnell Corp.*, 384 U.S. 563, 583 (1966); *Berger* v. *United States,* 255 U.S. 21, 31 (1921). Accordingly, we affirm Judge DeMascio's decision that recusal was not required.

The plaintiffs also complain that Judge DeMascio's conduct violated Canon 3A(4) of the Code of Judicial Conduct:

> (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex-parte* or other communications concerning a pending or

> impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

In addition to his previously described meeting with Board representatives and "negotiations" over the Board's proposed desegregation plans, the plaintiffs argue, Judge DeMascio's use of experts violated Canon 3A(4). By order of April 15, 1975, Judge DeMascio appointed three educators as experts to assist him in gathering background information, soliciting the views of community groups and educators, and evaluating the Educational Components of the Board's remedial plan. The plaintiffs do not question the court's authority to utilize experts. Rather, they complain the court's experts did not file reports of record and were never subject to cross-examination, but submitted their views *ex parte*.

We do not believe Judge DeMascio's use of experts, or his receipt through them of community and expert views on how best to approach the problems of desegregating Detroit schools, required recusal. We are concerned with the plaintiffs' charge that the reports of these experts were not placed in the record nor made available to the parties. Accordingly, we expressly direct that if any experts are employed to advise the district court on any further matters in this litigation, they shall prepare written reports, copies of which shall become part of the record and shall be made available to all parties or their attorneys.

The remedial phase of this litigation has been protracted and arduous. We recognized in a previous opinion that "District Judge DeMascio was faced with an extremely difficult (if not impossible) assignment, confronted as he was with the responsibility of formulating a decree which would eliminate the unconstitutional segregation found to exist in the Detroit

public schools, without transgressing the limits established by the Supreme Court." 540 F.2d at 236. Our review of Judge DeMascio's various opinions and orders inclines us not to disagree with District Judge James P. Churchill's assessment[6] of Judge DeMascio's conduct in these remedial proceedings:

> It is my opinion that the manner in which Judge Robert E. DeMascio has presided in this case has been exemplary and should command the respect of the parties, counsel, the judiciary, and the public.
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> 426 F.Supp. at 944.

However, in view of the public interest in the instant school desegregation case, the challenge raised by the plaintiffs, and the bitter feelings that have developed, this court suggests that, on remand, the Chief Judge of the District Court for the Eastern District of Michigan reassign this case either to himself or to another appropriate judge.

VI

It was indicated during oral argument that plaintiffs intend to proceed with their efforts to establish, within the guidelines enunciated by the Supreme Court in *Milliken* v. *Bradley*, 418 U.S. 717, 744-47 (1974) (*Milliken* I), a basis for a metropolitan remedy. *See* 540 F.2d at 240; 411 F. Supp. at 937. Our limited affirmances in *Bradley* v. *Milliken*, 540 F.2d 229 (6th Cir. 1976) and the present appeal are without prejudice to the district court's obligation to proceed with the interdistrict litigation, if pursued by the plaintiffs.

On remand, the district court will be empowered to make

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[6] Judge Churchill's comment is taken from his opinion holding, on a question referred to him by the Chief Judge of the district, that Judge DeMascio's conduct had not created the appearance of partiality and so did not require recusal in regard to faculty assignments.

further alterations in its previously approved remedial plans, as the evidence may require.

The case is remanded to the district court for further proceedings not inconsistent with this opinion and our previous opinion reported at 540 F.2d 229. No costs are taxed. Each party will bear its own costs on this appeal.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 78-1598

RONALD BRADLEY, et al.,
Plaintiffs,
LULAC COUNCIL NO. 11054, et al.,
Proposed Plaintiffs Intervenors-Appellants,

v.

WILLIAM G. MILLIKEN, et al., and BOARD OF EDUCATION of the School District of the City of Detroit, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Michigan.

(Decided and Filed April 14, 1980.)

Before: EDWARDS, Chief Judge, and PHILLIPS and PECK, Senior Circuit Judges.

PER CURIAM. LULAC Council No. 11054, et al. appeal from the district court's decision denying their application to intervene in the remedial phase of the Detroit school desegregation case. We affirm the district court's decision, but direct that appellants be permitted to intervene for the limited purpose of presenting evidence on a question not previously litigated in the district court.

Appellants sought to intervene in *Bradley* v. *Milliken*, Civ. No. 35257 (E.D. Mich.), in order to protect the interest of Detroit's Hispanic students in receiving bilingual education.

That interest, appellants felt, was imperiled by the district court's order that some white students in Detroit's Administrative Region 2 be reassigned to desegregate schools in the city's all-black inner city. Most of Detroit's Hispanic students live in Region 2, and all of the system's Spanish-bilingual programs are located there. Appellants are concerned that indiscriminate reassignment of Hispanic students to inner-city schools will produce shortages of Spanish-bilingual teachers and resource materials, interfere with established pilot programs, and generally impair the district's ability to meet the educational needs of Hispanic students. Accordingly, they sought to participate as parties in the development of a pupil-reassignment plan that would be sensitive to their concerns.

The district court, in an opinion reported at 460 F. Supp. 320 (E.D. Mich. 1978), denied appellants' application to intervene on the ground that it was untimely. The court understood appellants to argue that Hispanic students should be excluded entirely from the pupil-reassignment plan. However, the court had already rejected the Board's argument for excluding Hispanos; it thought allowing appellants to intervene would force relitigation of that issue. Furthermore, the court felt the appellants' interest was already represented by the Detroit Board, whose expertise and resources the appellants could not match. Accordingly, the court held appellants had no right to intervene and declined to allow permissive intervention.

We agree with the district court that appellants have no right to intervene. Even accepting appellants' argument that they do not seek to exempt Hispanic students from reassignment but merely to ensure that reassignments are made with students' bilingual-educational needs in mind, we think appellants' interest is adequately represented by the Detroit Board. Dr. Felix Valbuena, the Director of Bilingual Education for the Detroit school system, cautioned the court that reassigning Hispanic students out of Region 2 schools, let alone doing so indiscriminately, would jeopardize the district's ability to

provide quality bilingual education as required by law. Recognizing that danger, yet faced with this court's mandate to desegregate inner-city schools, the district court ordered the Detroit Board to develop a reassignment plan that would "make provisions for bilingual/bicultural programs" and to "create new programs [where necessary] to maintain the current level of bilingual/bicultural offerings." We have every reason to believe the Board has and will continue to observe the court's order. Given the Board's demonstrated concern for preserving its bilingual programs, we thing the appellants' interest already is adequately represented. Accordingly, we affirm the district court's decision that appellants are not entitled to intervene of right.

Nor did the district court abuse its discretion by denying permissive intervention in the pupil-reassignment proceedings. This case is already ten years old. Permitting the appellants to participate as parties in the development of a supplemental reassignment plan would delay further these already protracted remedial proceedings without producing any countervailing benefit.

Appellants can protect their interest, which we recognize is legitimate and substantial, by petitioning the district court to allow them to speak as *amici curiae* on behalf of the Spanish-speaking children of Detroit in future remand proceedings. Correspondingly, we suggest the court encourage and consider such *amicus* views in evaluating any reassignments of Hispanic students.

Despite our affirmance of the district court's ruling, we think appellants must be permitted to intervene for the limited purpose of presenting evidence on the question whether, historically, the defendants have practiced de jure segregation of Hispanos. That issue, not previously litigated, was raised by the Board's argument in *Bradley* v. *Milliken*, case nos. 78-1597, 79-1005, that Hispanos cannot be treated as white for school desegregation purposes. For the reasons stated in Part IV of our opinion in that case, — F.2d at —, we think repre-

sentatives of Detroit's Hispanic community must be allowed to participate as intervenors in the remand hearing on the limited issue of whether or not the Detroit Board has been guilty of de jure segregation of Hispanos. *Keyes* v. *School District No. 1, Denver, Colo.*, 413 U.S. 189, 197-98 (1973); *United States* v. *Midland Independent School District*, 519 F.2d 60, 63-64 (5th Cir. 1975), *cert. denied*, 424 U.S. 910 (1976); *Tasby* v. *Estes*, 517 F.2d 92, 103-07 (5th Cir.), *cert. denied*, 423 U.S. 939 (1975). Appellants may participate on other issues only if the district court permits them to do so as *amici*.

The case is remanded to the district court for further action consistent with this opinion. No costs are taxed. Each party will bear its own costs on this appeal.

OPINION AND ORDER OF THE DISTRICT COURT ON STUDENT REASSIGNMENT OF AUGUST 7, 1978 [460 F Supp 299]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 35257

RONALD BRADLEY, et al.,

Plaintiffs,

v.

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,

Defendants.

OPINION

(August 7, 1978)

We have re-examined carefully the demographic data characterizing the Detroit City Schools to determine whether further desegregation of Regions 1, 5 and 8 is possible. We undertake this task following an appeal of our remedial guidelines to the U. S. Sixth Circuit Court of Appeals. That court held our August 15, 1975 remedial guidelines for desegregation "insufficient as to Regions 1, 5 and 8" and remanded "for further consideration in regard to the[se] three central regions." *Bradley* v. *Milliken*, 540 F.2d 229, 239, 240 (6th Cir. 1976).

When considering all of the Regions collectively, the late Judge Stephen Roth found in 1972 that an adequate remedy based on pupil reassignments limited to the corporate limits

of Detroit would be impossible. The U. S. Supreme Court did not disturb this finding. *See Bradley* v. *Milliken*, 402 F. Supp. 1096, 1104 (E.D. Mich. 1975). We also agreed with Judge Roth's conclusion. We stated that:

> If Detroit's school population were more equally divided between black and white or if the desegregation area were sufficiently large to permit greater equalization, it would be possible to diminish the inevitable limitations on the task of eliminating racially identifiable schools in the district.
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> • • •
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> Limitations may be imposed by the desegregation area. For example, the black proportion of the population can be so great that racial balance will inevitably result in majority black schools. In such an area, only two alternatives are available: *The desegregation area must be enlarged or flexibility must be permitted in defining a desegregated setting.* 402 F.Supp. at 1102, 1131 (emphasis added).

The Sixth Circuit Court of Appeals has agreed on several occasions that desegregation within the geographic limitations of Detroit is "extremely difficult (if not impossible)." *See, e.g., Bradley* v. *Milliken*, 540 F.2d 229, 236 (1976).

As we seek to determine whether further desegregation is possible, it has become apparent that the litigants have not retained the adversary posture that characterized the liability issues tried before Judge Roth.[1] This changing adversary posture is only natural since the Detroit Board of Education has been willing to desegregate the school district without court prodding. Even before this action was filed in 1971, the Detroit Board planned the first stage for dismantling the dual system existing in the Detroit City Schools but was

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[1] This observation did not escape the scrutiny of the Supreme Court. *See Bradley* v. *Milliken*, 433 U.S. 267, 292 (1977) (*Milliken II*) (Powell, J., concurring).

prevented from carrying it out by an act of the state legislature. In response to our April 1975 order, the Detroit Board submitted a plan for reassigning 51,000 students to desegregate the school district. At the hearings following the Court of Appeals remand, the Detroit Board produced demographic data to establish that it had accomplished all the desegregative pupil reassignments possible and that additional reassignments were not feasible. In addition, the Detroit Board offered extensive testimony to support a three-part plan for desegregating faculty and staff.

The plaintiffs are well aware that the Detroit Board of Education is striving to desegregate the school district. The plaintiffs persist, however, in their conclusion that a school district is desegregated only when the racial composition of each school mirrors the system-wide racial ratio within 15% in either direction. On the other hand, the defendant Detroit Board, charged with the primary responsibility for maintaining a viable school system, insists that a sound plan for desegregation must take into account the hard realities at hand. During the most recent evidentiary hearings, the plaintiffs did not produce any evidence to refute the Detroit Board's contention that inclusion of Regions 1, 5 and 8 in the desegregation plan is no longer feasible. The plaintiffs argued instead that the Detroit Board's "contained classroom" method of delivering bilingual instruction is resegregating Region 2 and is providing neighborhood schools for one ethnic group. Tr. Sept. 7, '77 at 211. Thus, although the parties continue to disagree on an acceptable formula for desegregation, they are not and cannot be true adversaries.

Moreover, the state defendants are not in an adversary posture with either the Detroit Board of Education or the plaintiffs. They did not even participate in this last round of hearings. The state defendants have not really opposed the Detroit Board's efforts to desegregate; they only oppose paying the cost of desegregation. As a practical matter, the state's opposition to paying one half the cost for its own segregative acts is not always clear. After agreeing to pay 50% of the

construction costs for five area vocational centers, the state appealed to the Supreme Court this court's order requiring them to pay for one half of the other remedial programs. At the same time, the state voices no opposition to this court's order requiring them to provide the budgetary requirements of the court-created Monitoring Commission and has not sought an annual review of that order.

No party has ever taken the initiative in the remedy phase of these proceedings. For example, although unfavorable Monitoring Commission Reports of lagging implementation of court-ordered remedial programs provided many opportunities for initiative, the plaintiffs have failed to take any action. In addition, following each appellate court mandate, it has been necessary for this court to order a status conference to determine how the parties intended to proceed. In each instance, the court then had to order one party or the other to proceed. Now that demographic projections predict that the school district will be 87% black in 1979, the prospect that the parties will take adversary initiative in future proceedings is unlikely.

With the Court of Appeals remand in hand, we convened a status conference on October 27, 1976, to determine how the parties intended to proceed. Order of October 14, 1976. Five months later, with no party having moved for a hearing, we *sua sponte* ordered that hearings on the issue of faculty assignments begin on April 21, 1977. The plaintiffs then filed a motion to compel the Detroit Board to submit a further pupil reassignment plan and to adjourn the faculty assignment hearings pending resolution of the reassignment issue. We declined to adjourn the faculty hearings and subsequently ordered the Detroit Board to show cause why it should not be compelled to include Regions 1, 5 and 8 in the pupil reassignment plan. Order of April 20, 1977. The show cause hearing was subsequently adjourned at plaintiffs' request until September 6, 1977. The hearings on both issues have been completed and the parties have been afforded an opportunity

to argue and submit proposed findings, briefs, and responsive briefs.

SUMMARY OF PRIOR PROCEEDINGS

Four years ago, this cause was remanded by the Supreme Court for the "prompt formulation of a decree directed to eliminating the segregation found to exist in Detroit City Schools . . ." *Milliken* v. *Bradley*, 418 U.S. 717, 753 (1974) (Milliken I). Upon receipt of that mandate, we convened a pretrial conference to determine how the parties intended to proceed. We ordered the plaintiffs and the defendant Detroit Board of Education to submit plans for desegregating the Detroit school district and we afforded each of the parties an opportunity to critique each of the plans submitted. Following lengthy hearings, we found both plans unacceptable. We then issued guidelines for desegregation and required the Detroit Board to submit plans which conformed to those guidelines.

Under the plaintiffs' plan, any school that varied more than 15% in either direction from the system-wide racial ratio was a racially identifiable school in need of desegregation. We found the plaintiffs' plan unacceptable because it steadfastly relied upon an arbitrary ratio for defining racially identifiable schools. We also rejected plaintiffs' plan because it involved extensive pupil transportation that achieved only negligible desegregative results. Black students would be frequently transported from one identifiably black school to another for the sole purpose of achieving a predetermined racial mix. 402 F.Supp. at 1122-25. The Court of Appeals also declined to implement plaintiffs' plan. 540 F.2d at 239.

We found that the Detroit Board's plan also impermissibly sought to achieve rigid racial ratios in each school. The Detroit Board believed that schools that were 40-60% black (50-50% plus or minus 10%) were less susceptible to demographic change. We rejected the Board's plan because it paired schools located in naturally integrated neighborhoods

and transported white or black children for the sole purpose of accommodating a racial pattern. We agreed with the Detroit Board, however, that an acceptable desegregation plan within the meaning of Milliken I required the elimination of racially identifiable white schools in the City of Detroit. We reasoned:

> [T]he evil of segregation lies in the devasting psychological impact upon black children of the knowledge that they are being excluded from white schools. . . . However, when blacks are represented in all schools throughout the system, i.e., when white identifiable schools are eliminated, this psychological effect no longer exists. 402 F.Supp. at 1132.

We also concluded, as had the defendant Detroit Board, that Regions 1, 5 and 8 could not be included in the pupil reassignment plan because to do so would preclude meaningful interaction between black and white students in the other regions reasoning:

> Plaintiffs refuse to acknowledge that the racial composition of these three regions precludes their inclusion in a desegregation plan. In Region V, for example, there are 31,354 students of whom (excluding the Spanish surnamed) only 989 (3.1%) are white. In Region VIII, there are 29,725 students of whom (excluding Spanish surnamed) only 1,329 (4.5%) are white. In Region I, there are 24,907 students of whom (excluding Spanish surnamed) only 2,049 (8.2%) are white. Clearly, it would be futile to attempt desegregation within the boundaries of these regions; thus, a desegregation plan including these three regions would have to cross regional boundaries. But to include these regions in the Board's plan would bring about the same result that pertains after application of the plaintiff's (sic) own plan. The plaintiffs' plan itself is sufficient proof that any attempt to include these regions produces only negligible results. Application of plaintiffs' plan would make the Detroit school

> system more identifiably Black, and leave many of its schools 75 to 90 per cent Black. (Findings of Fact – March 28, 1972, 484 F.2d 215, 243-44 (1973.))
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> That inclusion of these three regions in a desegregation plan would produce only negligible desegregative results is inevitable because even excluding Regions I, V and VIII there are only 63,446 white students as compared to 103,007 black students. To attempt to disperse those white students throughout the eight regions, including the three overwhelmingly black regions, would produce such negligible desegregative benefits that the extraordinary remedy of such cross-regional bussing would be unwarranted. To do so would only serve to lessen the little community control blacks now enjoy in those regions and, therefore, injure the very class the remedy is intended to benefit. In the face of these "practicalities" there is no constitutional objection to leaving a number of one-race or predominantly one-race schools. 402 F. Supp. at 1129 (footnotes and citations omitted).

The Court of Appeals, although "recognizing the absence of alternatives," disapproved our exclusion of Regions 1, 5, and 8 and affirmed the pupil reassignment plan with respect to the remaining regions. The court characterized our finding of futility as "perfunctory treatment" holding that we "did not subject the exclusion of these three regions to the close scrutiny required by *Swann*." *Id.* 540 F.2d at 238. The court held that the record did not support the conclusion that the school board carried the heavy burden of justifying the one race schools located in these regions, and that it appeared we impermissibly considered these three regions in isolation. What neither the record before the Court of Appeals, nor this court's prior opinions revealed was the painstaking care with which the court attempted, with the assistance of its court-appointed experts, to devise a plan that would provide meaningful pupil reassignments in these regions. Three subsequent submissions by the Detroit Board were thoroughly

examined, and we subsequently approved with modifications a Detroit Board plan which conformed to our guidelines. *Bradley* v. *Milliken*, 411 F.Supp. 943, 944 (1975). Given the small number of white students in the school district, we found it impossible to devise a plan which could bring meaningful pupil reassignments in each and every region. The Court of Appeals shared the same frustration that this court experienced in attempting to reassign students within these regions. The court stated:

> We recognize that it would be appropriate for us at this point to supply guidelines to the District Judge as to what he should do under this remand. Omission of such guidelines is not based on any failure to consider the problem in depth. It is based upon the conviction which this court had at the time of its en banc opinion in this case . . . that genuine constitutional desegregation can not be accomplished within the school district boundaries of the Detroit School District. 540 F.2d at 240.

Our guidelines for desegregation had provided that schools should not have a black student population less than 30%, and we treated as desegregated a school whose student body was between 30% and 55% black. In order to preserve naturally integrated neighborhoods, we determined that schools already within these parameters should not be subjected to student reassignments. We required that all other available methods of pupil reassignments be exhausted prior to relying upon transportation. We further provided that the Detroit Board should achieve a racial mix of 50%-50% in zoned middle schools and should create open enrollment middle schools similar to the magnet middle schools then in existence, which would be acceptable when 55-70% black. 402 F. Supp at 1134-38. We also ordered remedial programs which were designed to alleviate the effects of defendants' prior acts of segregation. 402 F.Supp at 1118. These educational components were affirmed by the Court of Appeals, 542 F.2d at

241-42, and by the Supreme Court, 433 U.S. 267 (1977) (*Milliken II*).

Finally, incidental to and concurrent with the implementation of our guidelines, we ordered that teachers in the Detroit school system be reassigned to achieve a distribution of not more than 70% of teachers of one race in each school. Order of August 28, 1975. The events leading to the entry of this order have been detailed elsewhere. *Bradley* v. *Milliken*, 426 F. Supp 929, 940 (E.D. Mich. 1977). The Court of Appeals vacated that order but agreed that a district court has equitable power to order the reassignment of faculty despite Judge Roth's prior finding that there had been no *de jure* segregation in faculty assignments by either the Detroit Board or the state defendants. 540 F.2d at 246-47. Our guidelines had acknowledged that there were other criteria for measuring a unitary system in addition to pupil assignments, such as faculty assignments, staff assignments, extracurricular activities, and equality of facilities. 402 F.Supp. at 1133.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Pupil Reassignments

The population shift from white to black in the district has accelerated well beyond our 1975 demographic projections. *See* 402 F.Supp. at 1137; *see also* 338 F.Supp. at 585. The official October 1976 count for the school district disclosed that it was 79.4% black. Tr. Sept. 6, '77 at 10. By the end of the 1978-79 school year, the school district will be 87.0% black. Furthermore, the defendant Detroit Board has produced evidence, which we fully credit, that this school district will be 89.6% black by 1980 and 91.8% black by 1981. BX-C.*

The Detroit Board's chief demographer, Mr. Henrickson, prepared worksheets that depict the grade-to-grade survival

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* Detroit Board of Education Exhibits will be designated BX followed by a letter or number.

method he utilized to arrive at the projections contained in BX-C. *See* BX-D. Mr. Henrickson obtained obtained the actual number of births for the year 1966 as recorded by the Board of Health, corrected to Detroit residency. He then tracked the actual number of children, black and white, who appeared in kindergarten five years later and then followed that group of children as they progressed from grade to grade in their schools from 1971 through 1976. Tr. at 11-23; BX-D. Those computations establish that the grade retention rate for black students is much higher than for white students. For example, 97.9% of the black students entering kindergarten in 1971 remained in the school system through the sixth grade while only 78% of the white students remained. Mr. Henrickson testified that he used those retention rate percentages to project the composition of the student body through 1981 based on the trends that he observed for the period 1971-1976. Tr. at 11-12.[2] He did this for each grade individually, repeating the process for black and white students separately. Tr. at 13-17.

We find Mr. Henrickson's method of projection logical and reliably accurate. He testified that in his experience he has been able to predict future enrollment within 100 to 200 students. Tr. at 18. This is a standard procedure used in many school districts and one which he has used in the regular course of his employment to forecast future needs of the school system. Tr. at 31.

Mr. Henrickson further testified that in each year since 1971, approximately 10,000 fewer students have enrolled in the Detroit school system. Tr. at 24.[3] This downward trend is due principally to a reduction in the number of white students, and is expected to continue for at least the next five

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[2] If Mr. Henrickson was unable to depict a clear trend, he would use an average. Tr. at 27.

[3] The city and school population has been declining steadily since 1950. 338 F.Supp. at 585.

years.[4] Tr. at 30. The decline in the number of white students is attributable to the declining white birth rate, and in part to white parents who take their children out of the Detroit school system. Tr. at 22-24. During this period of decreasing enrollment, the total number of black students in the system has remained reasonably constant. Tr. at 24.[5] Considering the declining birth rate, together with the declining retention rate for white students, Mr. Henrickson projects the racial composition in future years as follows:

Year	Total Enrollment	Number/% Black	Number/% White
1978	218,110	184,230 84.5%	33,880 15.5%
1979	208,610	181,550 87%	27,060 13%
1980	198,000	177,330 89.6%	20,670 10.4%
1981	188,170	172,820 91.8%	15,350 8.2%

Thus, we are confident that Detroit will have a school system that is 91.8% black in 1981. This trend is independent of student assignments, and any changes that might be made in the pupil reassignment plan will neither accelerate nor decelerate the downward trend. Tr. at 26, 30.

In addition, pronounced demographic shifts are occurring throughout the entire city. Detroit Board Exhibits H, I and

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[4] For example, in 1971, 53.7% of the white children born five years earlier in Detroit entered kindergarten in the Detroit school system. This retention rate decreased to 51.2% in 1972, to 48.1% in 1973, to 46.9% in 1974, to 42.2% in 1975, to 40.2% in 1976 and to 39.0% in 1977. Tr. at 23.

[5] Thus, during the period from 1971-1976, black students as a percent of total enrollment increased from 65.1% to 79.4%.

J clearly depict the constant and increasing influx of black students into every region.[6] These exhibits are maps which divide the city into elementary school attendance areas and show the racial composition of students by *residence* in each school area for the years 1974, 1975 and February 1977. In 1974, there were 60 school attendance areas which were less than 30% black and 10 which were 30-55% black. BX-H. In 1975 there were 57 school attendance areas less than 30% black and 9 that were 30-55% black. BX-I. In February 1977, the number of school attendance areas that were less than 30% black declined to 39 while the number between 30-55% doubled. BX-J. Thus, in a brief three-year period, there were 21 fewer school attendance areas that were under 30% black, and 13 fewer school attendance areas less than 55% black. Many of the school attendance areas that remain under 30% black continue to integrate and steadily approach that percentage:

School Area	1974 % Black	1977 % Black
Burgess	4%	24.7%
Lodge	0%	8.1%
Houghten	4%	11.4%
Healey	0%	15.0%
Gompers	0%	6.4%
McLean	2%	16.4%
Pulaski	2%	16.0%
Columbus	2%	14.6%
Wilkens	6%	14.0%
Marquette	6%	14.1%
Hanstien	0%	8.0%

BX-H & J.

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[6] This pronounced demographic shift of black families is not occurring in Region 2, where there is a high concentration of Spanish surname families.

These changing residential patterns are occurring principally in schools that border the outer limits of the city, east and west. In just two years, many of those schools reflect black enrollment that is 30-55% and over:

School Area	1975 % Black	1977 % Black
Holcomb	15.0%	35.2%
Burt	17.0%	37.0%
Harding	29.0%	35.2%
Vetal	25.0%	45.9%
Mann	27.0%	52.8%
McCall	8.0%	33.0%
Wayne	9.0%	33.3%
Stellwagon	15.0%	43.5%
Clark	11.0%	35.8%
Emerson	62.0%	73.1%
Cooke	38.0%	57.8%

BX-I & J; Tr. at 48-50.

Thus, the outer regions of the city are experiencing a steady increase in residential black population and a steady decline in white population. Mr. Henrickson concluded that this is the result of black families moving from Regions 1, 5, and 8 into regions further out from the center of the city. Tr. at 37; BX-E. He discounted the possibility that the increase in black enrollment could result from black families taking their children out of private schools and enrolling them in public schools. He based this opinion upon his own experience and knowledge that few black families transfer from private to public schools, and further on discussions with regional superintendants. Tr. at 42-43. We find that Mr. Henrickson has fully documented his judgment on this point. When this changing residential pattern is taken together with our reassignment plan, the result is that out of approximately 185 elementary schools, 141 are at least 55% black, 37 are 30-55%

black and only 7 are less than 30% black. Tr. at 50; BX-K.[7]

We conclude that as a result of the present racial ratios in the vast majority of the schools, the predominance of black students in the school district and the accelerated population shifts, no more desegregation is feasible in Regions 1, 5 and 8 collectively. These pronounced demographic shifts, first predicted by Judge Roth,[8] and the predominance of the black student population have obliterated the optional and gerrymandered attendance zones which permitted white students to avoid attending integrated schools, the practice of bussing black students from overcrowded schools beyond a closer white school and the practice of altering feeder patterns in racially changing neighborhoods. The Supreme Court in Milliken I was unable to find from the evidence in the record below that these de jure acts of segregation found by Judge Roth had a segregative effect beyond the boundaries of the Detroit City Schools. This was so because the actions which formed the basis for Judge Roth's liability findings were basically reactions by the Detroit Board of Education to changing residential patterns. The optional and gerrymandered attendance zones served the purpose of keeping white students out of schools that, in the absence of such policies, would have become, and in fact have become, in-

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[7] Five of the seven schools under 30% black are located in Region 2. Greenfield Union in Region 6 is only 26.1% black because of the large Chaldean population attending that school. The percentage of white students at Greenfield Union has actually increased somewhat apparently as a result of further movement of Chaldean children into this area who are counted as white. Tr. at 51.

[8] Judge Roth traced the demographic history of the City of Detroit and its school district describing its change from a city 91% white in 1920 to a metropolitan area in which whites have migrated to the suburbs leaving the city composed of predominantly poor black and poor aged and white families. White families continued to leave the outer portions of the city by either moving to the suburbs or placing their children in private schools, while black families continue to move into their place from the core city.

tegrated naturally. Judge Roth did not find, however, that these policies in turn created additional residential segregation which in turn created additional school segregation. Had he made such findings, and had such findings been supported in the record, we assume the Supreme Court would have affirmed the propriety of an interdistrict remedy.

The demographic data presented by the Detroit Board compels us to further conclude that it is the demographic residential patterns, operating independently of school assignments, together with the predominance of blacks in the school system, and not the segregative acts of the Detroit Board and the state that have resulted in the one race schools that remain in Regions 1, 5 and 8. Although a school district that retains one race schools bears a heavy burden to satisfy the court that their composition is not the result of present or past discriminatory action, *Swann* v. *Board of Education*, 402 U.S. 1, 26 (1971), that burden is satisfied by the Detroit Board's showing that such schools are the result of population shifts, or the predominance of black school children in the district as a whole, or both. *See Calhoun* v. *Cook*, 522 F.2d 717 (5th Cir. 1975), *rehearing denied* 525 F.2d 1203 (5th Cir. 1975); *Hobson* v. *Hansen*, 327 F.Supp. 844 (D.C. 1971); *Tasby* v. *Estes*, 412 F.Supp. 1192 (N.D. Texas 1975); *United States* v. *Choctaw County Board of Education*, 339 F.Supp. 901 (S.D. Ala. 1971); *Carr* v. *Montgomery County Board of Education*, 377 F.Supp. 1123 (M.D. Ala. 1974), *aff'd* 511 F.2d 1374 (5th Cir.) *cert. denied* 423 U.S. 986 (1975). A school-by-school examination of student enrollment by residence and as affected by student assignment make it apparent that the school district no longer discriminates against black students. That examination discloses that the schools are increasing black enrollment through natural influxes of black families into the changing neighborhoods. The Detroit Board's desegregation plan brought schools within the parameters of our guidelines, and its present assignment pattern is free from the vestiges of prior discrimination. While there may be a presumption of system-wide impact of segregative policies,

Keyes v. *Denver School District No. 1*, 521 F.2d 465, (10th Cir. 1975) *cert denied* 423 U.S. 1066 (1976), we find that the Detroit Board has overcome such presumption and established conclusively that the existence of one race schools is not the product of their past or present discriminatory acts.

In *Calhoun* v. *Cook, supra,* the court was required to determine the amount of desegregation possible in the Atlanta School District, which had become 85% black. The district court had approved a plan which achieved 30% black enrollment in every school and which left 92 of 148 schools at least 90% black. The Fifth Circuit Court of Appeals acknowledged that an 85% black student enrollment would inevitably leave a number of one race schools:

> The district court also found that Atlanta's remaining one-race schools are the product of its preponderant majority of black pupils rather than a vestige of past segregation. These findings are not clearly erroneous. The aim of the Fourteenth Amendment guarantee of equal protection on which this litigation is based is to assure that state supported educational opportunity is afforded without regard to race; it is not to achieve racial integration in public schools. 522 F.2d at 719.

The court also affirmed the district court's findings that the Atlanta School Board no longer discriminated against black students, that its assignment pattern was free from the vestiges of prior discrimination and that its large number of identifiably black schools was the product of demographic factors. The court elaborated in its denial of a rehearing:

> It would blink reality and authority, however, to hold the Atlanta School System to be nonunitary because further racial integration is theoretically possible and we expressly decline to do so. 525 F.2d at 1203.

Similarly, in *Tasby* v. *Estes*, 412 F. Supp. 1192 (N.D. Texas 1975), the court, in devising a remedy for the Dallas Indepen-

dent School District (DISD) which was 41.1% white, 44.5% black and 13.4% Mexican-American, refused to disturb schools which had become naturally integrated through residential patterns. 412 F.Supp. at 1206. The court, after considering the geographic characteristics of the district and the small number of white students remaining, approved a plan which did not disturb the South Oak Cliffs, an area of the DISD which had become 98% black. The court emphasized that its ruling did not deny the students of South Oak Cliffs a remedy, finding that its superior facilities would make it a model for the district. 412 F.Supp. at 1204. *See Hobson* v. *Hansen*, 269 F.Supp. 401, 515 (D.D.C. 1967) (refusing to disturb assignment patterns because of the ten to one ratio of black to white children and granting instead additional relief which dealt with equalizing the quality of education in the district.)

In *Brunson* v. *Board of Trustees of School District No. 1 of Clarendon County, S.C.*, 429 F.2d 820 (4th Cir. 1970), the court affirmed the district judge's order implementing a desegregation plan developed by the Department of Health, Education and Welfare. That plan provided for disbursing white students among the schools so that each school had a white population between 5 and 17% in a school district which contained 2,408 black students and 256 white students. In a separate opinion, three judges criticized the HEW plan as one which "threatens to swallow up, rather than vindicate, the constitutional mandate for integrated schools in Clarendon District No. 1." 429 F.2d at 822 (Craven, Cir. J., concurring and dissenting). Judge Sobeloff concurring in the judgment, disagreed with the dissenting opinion. He found the fear of white flight irrelevant and criticized the theory of the dissent that majority white schools provide an optimum racial mix. That theory was premised on an assumption of white superiority which he found unacceptable in fact or law. 429 F.2d at 823-27 (Sobeloff, Cir. J., concurring).

We agree with Judge Sobeloff's criticism of the *Brunson* dissent and note that Judge Craven later acknowledged doubts

about the validity of the approach of his dissent. *Bradley* v. *School Board of City of Richmond, Virginia,* 462 F.2d 1058, 1063 n.5 (4th Cir. 1972), *aff'd* 412 U.S. 92 (1973). We also agree with one basic premise of *Brunson;* the mere scattering of a few remaining white students does not provide a remedy consistent with the fourteenth amendment as interpreted in *Brown* v. *Board of Education,* 347 U.S. 483 (1954). This was also the conclusion of the court in the two cases which most closely approximate the demographic data in this district, the school districts for Washington, D.C., and Atlanta, Georgia. The Court of Appeals has recognized this to be so in Detroit as well, in that it rejected the alternative of reassigning the remaining white students "among the predominantly black schools on a percentage basis somewhat along the lines originally proposed by plaintiffs. It is obvious that such a requirement would accomplish nothing more than token integration, and that of uncertain duration." *Bradley* v. *Milliken,* 540 F.2d 229, 239 (6th Cir. 1976).

We therefore adhere to our prior conclusion that a school system cannot be desegregated by making all schools racially identifiably black. This result inevitably occurs when further desegregation is attempted for Regions 1, 5 and 8 collectively. When racial proportions are so extreme that adequate interaction between children of both races cannot be accomplished, further desegregation is not possible and it is unwise to disturb assignment patterns which effectively desegregate the schools in other regions. Moreover, in a school district which has become increasingly black while undergoing a dramatic decline in white student enrollment, it is very important that naturally integrated neighborhoods not be disturbed. Judge Wright recognized this in the District of Columbia. Indeed, our own efforts to preserve the few remaining racially stable school attendance areas in Detroit received favorable comment by the Supreme Court:

> [T]he District Judge took great pains to devise a workable plan with a minimum of pupil transportation. For

> example, he sought carefully to eliminate burdensome transportation of Negro children to predominant Negro schools and to prevent the disruption, by massive pupil reassignment, of racially mixed schools in stable neighborhoods which had successfully undergone residential and educational change. *Milliken II*, 433 U.S. at 288 n.19.

Perhaps, the most graphic evidence that Regions 1, 5 and 8, treated collectively, cannot be further desegregated is the insignificant number of white students in the city available for that purpose. To establish a pool of white students available to further desegregate Regions 1, 5 and 8, the defendant Detroit Board submitted an exhibit which summarizes, from the data contained in the 1977 fourth Friday count, the number of schools which are less than 50% black. *See* BX-O. We agree with the Detroit Board that this is the relevant starting point in determining whether additional pupil reassignments can occur in Regions 1, 5 and 8. We have accepted as desegregated any school 30-55% black and further held that a school 55% or more black is a racially identifiable school. *See* 402 F.Supp. at 1134, 1135. We deemed that guideline essential to effectively utilize the white children then available to achieve the racial ratios now existing in schools throughout the city. *See* p. 14, *supra*. To use a significantly higher figure than the 50% suggested by the Detroit Board would cause all the schools to become identifiably black, a suggestion we have repeatedly rejected. Moreover, a greater or lesser percentage starting point would materially disturb present assignment patterns and tend to increase the number of black children being bussed from one identifiably black school to another. As we stated previously, and the Sixth Circuit and Supreme Court agreed, it casts a heavy burden on black students to bus them great distances to attend another majority black school. *See* 402 F.Supp. 1125.

BX-O shows that there are 31 elementary schools in the district which are less than 50% black. These schools contain a

total of 7,860 non-black students and 4,463 black students. BX-1 attached to Board findings. In order to assure that these schools remain desegregated, we could only reassign the excess of non-black students over black students, or 3,397. The 1977 fourth Friday count, however, shows that there are 38,259 black students in the elementary schools in Regions 1, 5 and 8, or 11 times the number of non-black students available to be reassigned among them. BX-0; Tr. 55-64; BX-2 attached to Board proposed findings. Thus, the evidence establishes that most of the white children in the school district are being utilized in the present reassignment plan for schools which are at least 55% black, and an insignificant number of white students remain to meaningfully desegregate Regions 1, 5 and 8. To disperse these few available white children among the schools in those regions would accomplish nothing more than token integration and transport black children to other majority black schools.

The situation in the middle schools is no different. There are six schools less than 50% black containing 2,305 non-black and 1,572 black students.[9] The difference or only 733 non-black students, is all that is available to integrate the middle schools in Regions 1, 5 and 8, or fewer than the number of black students in 10 of the 21 middle schools in those three regions. The 21 schools have a combined black student population of 17,015 or 23 times the number of available non-black students. This predominance of black students is even more pronounced at the high school level. The only high school that is not over 50% black is Western High School in Region 2, which has 1,069 non-black and 894 black students. This provides a pool of 175 students to integrate the high schools in Regions 1, 5 and 8 which have a total of 17,783 black students, approximately 100 times the number of available non-black students. Assuming the Detroit Board transferred all 175 students to Northeastern High School, the school with the smallest black population, and assigned an equal number

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[9] Five of these six schools are in Region 2.

of students from Northeastern to Western, Northeastern would have a student population of 1,210 black and 244 non-black. The maximum desegregation possible at the high school level in Regions 1, 5 and 8 would yield a high school 83.2% black, still racially identifiably black.

Having concluded that no further desegregation is possible in Regions 1, 5 and 8 collectively, we now examine all regions separately. In doing so, we note that the demographic patterns which we have described above fairly characterize every region in the district except Region 2. Black student enrollment in Region 2 has remained virtually unchanged, increasing from 60 to only 62% from 1974 to 1977. The residential trends there greatly differ from every other region. Virtually every school attendance area of Region 2 that was less than 30% black in *resident* student population in 1974 has remained unchanged, and, unlike the other regions, has not integrated naturally. The most extreme examples are the Higgins, Bennett, Harms, Beard, Neinas, McKinstry and Logan school attendance areas. The largest black resident population is at Logan where it was only 3.6% in February 1977, a decrease from 9%. The most extreme example is at Hunter, which was 34% black in 1974 but 1.2% black as of February 1977. BX-H, I and J. Moreover, 5 of the 6 majority white middle schools that exist in the city are located in Region 2. Western High School, located in Region 2, has a lower black enrollment than any other high school in the city.[10]

Thus, the residential patterns which are conspicuous in every other region are simply not occurring in Region 2. The impact of this demography on the racial composition of the schools is substantial and can clearly be seen when the analysis offered by the Detroit Board to prove that it is impossible to desegregate the schools of Regions 1, 5 and 8 by pupil reassignment is applied. There are fourteen (14) elementary schools

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[10] Western is significant because Judge Roth singled it out in his findings on liability as the school to which white students transferred during the early 1960's to escape integration.

in Region 2 which are less than 50% black. These schools contain the following numbers of students:

School	Region 2 Non-Black	Black
Beard	391	133
Bennett	444	189
Harms	329	152
Higgins	354	210
Holmes	280	190
Hunter	23	0
Jefferies	379	208
Logan	357	192
Maybarry	379	166
McKinstry	252	160
Neinas	366	233
McMillan	258	114
Priest	613	505
Webster	465	293
	4,890	2,745

In these schools above, there are 2,145 more non-black than black students. To this may be added the excess white student population of Burton and Franklin Schools in Region 1 yielding a total of 2,459 more white students than black.[11] Exchanging students between the majority white schools in Regions 1 and 2 and the predominantly black schools in Region 1 would produce an elementary school population in Region 1 of 5,091 black and 3,248 white, or 61.1% black. Of course, we are not suggesting that this one-for-one exchange is feasible, or should be undertaken. We have already held

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[11] In Region 1, Burton School has 239 white students and 77 black students. Franklin School has 249 white students and 97 black students. The remaining elementary schools in Region 1 have 7,062 black students and 615 white students.

that all pupil reassignments must be considered in the light of the practicalities of the situation. This mathematical exercise, however, does demonstrate that the numbers alone do not pose an obstacle to further desegregation of Region 1 using students from Region 2.

The Detroit Board contends that most of these non-black students in Region 2 are not available for transfer, because they are Spanish-speaking students involved in bilingual-bicultural programs in their schools.[12] There is a large number of Spanish-surnamed students residing in Region 2, and the Detroit Board argues that it cannot control where Spanish-speaking persons choose to live. That may well be. As plaintiffs contend, however, restricting bilingual programs to one region provides Spanish families with neighborhood schools not available to other Detroit children, and is an added inducement for them to move there. We cannot approve this wholesale exclusion of Spanish-speaking students from the pupil reassignment remedy. This case began as and remains a racial desegregation case, and for school assignment purposes Spanish-surnamed students cannot be treated differently than other white students. Bilingual education is not a justification for treating one ethnic group in isolation nor is it a substitute for desegregation. *Keyes* v. *Denver School District No. 1*, 521 F.2d 465, 480 (10th Cir. 1975) *cert. denied* 423 U.S. 1066 (1976).

In a supplemental brief, the Detroit Board contends that its bilingual-bicultural program has not resegregated the schools in Region 2. We cannot agree. The influx of black families into Region 2 cannot occur naturally when bilingual programs for Spanish-surnamed persons are confined to one

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[12] The Detroit Board has always prepared its demographic data so as to reflect student enrollment, black, white, Spanish surname, and other. The Detroit Board has argued that these separate categories are essential to comply with regulations of the Department of Health, Education and Welfare.

region.[13] The Detroit Board has produced testimony to the effect that adjustment will be made to the number of students transported to the schools we have singled out in Region 2, so that all schools will reflect at least 30% black student enrollment. Tr. at 51. This argument, however, misses one crucial point. The Court of Appeals remanded this cause with instructions that we re-examine the issue of pupil reassignments in Regions 1, 5 and 8. The bilingual-bicultural program cannot provide wholesale justification for excluding Spanish surnamed students along with other white students from reassignments which may further desegregate Regions 1, 5, *or* 8. Bilingual programs, although essential, must be subordinated to a desegregation plan. *Keyes, supra* at 480. The evidence, on the whole, compels us to conclude that the Detroit Board has not shown cause why there should not be additional pupil reassignments in Region 1, using students from Region 2.

2. Faculty Assignments

Our August 15, 1975, guidelines recognized that desegregation of faculty and staff was an essential indicia for measuring a unitary school system. 402 F.Supp. at 1133. We believed, however, that "it would be inappropriate for this court to order any reassignment of faculty at this time" because those changes should await the court's assessment of the effects of pupil reassignments and changed grade structures on faculty assignments.[14] Thus, we directed "the Detroit Board and the Detroit Federation of Teachers [to] begin negotiations concerning reassignments necessitated by other components of this plan." 402 F.Supp. at 1144. Thereafter, the Detroit Board and the DFT stipulated to the entry of an order, which

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[13] The Detroit Board is required by state law to privide bilingual education for all students requiring such services in all regions. M.C.L.A. 380.1153(1) (1978 Supp.).

[14] Grade restructuring and other aspects of the pupil reassignment plan necessitated the transfer of 1200 teachers.

achieved "a distribution of not more than 70% of teachers of one race in each school." Order, Aug. 28, 1975. We must now determine whether this assignment pattern adequately desegregates faculty and staff in this school district.

The plaintiffs argue that the court must go further than the present order provides. They contend that the Detroit school system "still shows patterns of racial identifiability that have never been fully dismantled," that the school system should achieve a distribution of teachers by race that reflects, where possible, the system-wide racial ratios at each grade level, and that variances should not be greater than that required to accommodate specialization of teaching functions. Tr. April 24, '77 at 6, 13-14. To support these contentions, the plaintiffs called as a witness Dr. Robert Green, Dean of the College of Urban Development at Michigan State University. Dr. Green defined racial identifiability:

> A school can be viewed as being racially identifiable when any set of selective personnel that services that school, be they teachers or pupils, when their numbers in that particular school departs significantly, or unusually from their representation in that system on a system wide basis. That's the kind of a general rule of thumb that can be used. Tr. of April 29, 1977, at 543.

Doctor Green testified that the racial identifiability of the faculty has a significant educational impact upon students, that teachers serve as adult role models for students and hence it is important that children have teachers of both races, and that students whose environment is racially isolated will grow up with narrow, restricted views of the world. Tr. at 535-36.[15] He later explained that racial identifiability of a school is readily perceived by the community, parents and students

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[15] Dr. Green relied upon the authoritative work of Albert Bandura, a leading authority on psychological modeling. Mr. Bandura discusses in a special chapter the impact that role models play in the personality development of children.

attending that school, that a student's perception of the composition of a school's faculty as identifiably black or white affects a child's motivation to achieve, affects the general performance and conduct of black students, and finally causes black students to have a lower perception of themselves, inhibiting their educational achievement. Tr. at 1384-85, 1390-94. It is his view that students perceive schools with a majority white faculty in majority white schools as academically superior. Tr. at 1390. Although their perceptions are not statistically accurrate, students are, according to Dr. Green, generally aware of the racial composition of a school system. Tr. at 580. He concluded that students would perceive any school with a faculty which departs radically from the system wide racial ratios as one that has been given special consideration for racial reasons. Tr. at 1387.

The defendant Detroit Board called as its expert Mr. Fred Martin, Executive Director of Personnel for the Detroit School System.[16] He testified that students viewed teachers as role models and emphasized that in a system undergoing desegregation it is desirable that students have experiences with teachers of all races. Tr. at 284, 1028-33. Mr. Martin also believed that student perceptions are important; but unlike Dr. Green, Mr. Martin was concerned with the opportunities afforded students to interact with teachers of different races. Tr. at 1163-64. Thus, at the elementary school level, Mr. Martin would not only strive to achieve a faculty that reflected the racial distribution in the system as a whole, but

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[16] Mr. Martin is a highly qualified staff member of the Detroit Board. His vast experience has given him an expertise on the relationship of faculty assignments to the desegregative experience of Detroit students. He has a Bachelor's Degree in Social Science, Psychology and English, a Master's Degree in Administration, Sociology and Social Science. He is presently a doctoral candidate in Education Administration and Psychology. He has been an assistant principal and teacher in the Detroit school system. He also taught courses in sociology of urban schools at Wayne State University and the University of Michigan. Tr. at 278-79.

he would also seek to insure individual student contact with teachers of both races. Tr. at 1175. In commenting upon the Detroit Board's proposal to replace four black teachers with four white teachers at Central High School, he conceded that changing Central from 64.4% black to 60.4% black was not significant in terms of percentage change, but he viewed the addition of four white teachers who have contact with 140 students as significantly contributing to the desegregative experience of those students. Tr. at 1460-61, 1469. When the system-wide faculty approached 70% of one race, Mr. Martin would then inquire into the reasons behind that racial composition and seek to change hiring policies to reverse the trend. Tr. at 755-56. Dr. Green, on the other hand, would strive to achieve faculty assignments that mirror the system-wide racial composition regardless of what that racial proportion may be.

The Detroit Federation of Teachers (DFT) called as its expert witness, Dr. John Simpkins, Dean of the College of Education at Wayne State University and an eminently qualified educator. Dr. Simpkins also agrees that teachers serve as role models for students and that it is educationally desirable that students have teachers of both races. Tr. at 1666-70. Dr. Simpkins does not agree, however, that teacher assignments must reflect the systemwide racial composition. He testified that it is desirable to integrate faculty only to the extent necessary to avoid the appearance of what he termed tokenism, and that token integration, such as one white teacher in a school with ten black teachers, should be avoided because it places disproportionate pressure on the single white teacher. Tr. at 1677. Therefore, Dr. Simpkins would approve the present faculty distribution accomplished by our August 28, 1975 order. He testified that a faculty is sufficiently desegregated when a student has one chance in three to interact with a teacher of both races, and that additional reassignments would serve only to improve faculty statistics without necessarily having a beneficial effect upon students. Tr. at 1662-63, 1683.

Dr. Simpkins clearly understands the importance of insuring

student contact with teachers of both races to eliminate the effects of prior state imposed racial isolation. Commenting upon the need for black students to interact with black teachers, he said:

> [Y]oungsters need to believe that they can be whatever they aspire to be. And this belief is reinforced when they see people who look like them, who are, in fact, doing those things . . . Tr. at 1667.

He testified that it was important that students interact with black and white teachers because it enhances their concept of equality, and because it is important that black students see white people in a humanitarian role. Tr. at 1668-69.

We agree with these expert witnesses that students view teachers as role models, and therefore, it is educationally desirable that students interact with teachers of both races. We do not agree, however, with Dr. Green's theory of racial identifiability as it pertains to a school system such as Detroit. He is unduly concerned that a student attending a school with a faculty which departs significantly from the system-wide racial composition would perceive that school as one that has been afforded special treatment, and would have the impression that other schools in the system have been treated similarly. Tr. at 1565-66. The most serious objection we have to Dr. Green's theory is that it treats the racial mix of faculty in the Detroit City Schools in a vacuum. We cannot accept the suggestion that a student's perception of racial identifiability of his or her school faculty is limited to the school district's boundaries. A student attending a school on the far east side of Detroit is more likely to compare his school to closer schools in adjacent suburbs rather than to

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[17] His testimony became less credible when, on cross-examination he admitted that under the theory he was advancing, the faculty at the college where he is dean would be perceived as racially identifiably black. Tr. at 1370-71.

schools in the far northwest section of the city. Dr. Green's testimony is also of doubtful assistance to the court because it was based on the incorrect assumption that the court had found the faculty of schools in the district *de jure* segregated. Tr. at 1424, 1428, 1440. We reject the rigid concept that students would receive a desegregated experience in a school with a 90% black faculty simply because the faculty was 90% black system wide. A faculty is desegregated fully only when there is adequate opportunity for students to interact with teachers of both races and teacher assignments are made on a racially neutral basis.

Neither can we fully accept the conclusions of Dr. Simpkins. Although he agreed that the present 70-30 ratio created a high probability that a student would not have contact with teachers of both races, he nevertheless accepted the current faculty as desegregated, despite his acknowledgment of the need for interaction between students and faculty of both races. Tr. at 1676-78. In support of his position, Dr. Simpkins admitted that he assumed the Detroit district was moving toward a 50-50 faculty distribution in each school, and that his conclusions might well have been different had there not already been one large scale teacher reassignment. Tr. at 1881-83. Dr. Simpkins was overly concerned that additional teacher transfers would detrimentally impact the stability of the schools by disrupting other essential faculty characteristics such as sex and age. His analysis failed to place sufficient weight on the need to afford Detroit school children a complete desegregative educational experience. Although the current faculty distribution does provide something more than token integration, Detroit students should, if at all feasible, receive more than a remedy that provides only minimal desegregation. This is particularly important in a district where the students have been racially isolated for years.

Dr. Simpkins conceded that the faculty distribution in Regions 1, 5 and 8 left something to be desired. Tr. at 1677. In fact, it appears that faculty reassignments in those regions

were not made on a completely racially neutral basis, despite our order of August 28, 1975. Schools which had a substantial white student enrollment retained a predominantly white faculty, while schools with a predominantly black student enrollment have predominantly black faculties. Tr. at 2005-2019; DX-3A, 6 and 11. Thus, Regions 1, 5 and 8, which have an overwhelmingly black student enrollment, have faculty ratios that approximate 70% black, while in Region 7, more than half the schools have faculty ratios that are close to 70% white. Indeed, in Region 7, the percentage of schools with a majority white faculty increased from 72% to 88% between 1974 and 1976. Tr. at 139, 672-73. Similarly, in Region 8, the percentage of schools with a majority black faculty increased from 76% to 85% between 1975 and 1977. We cannot agree that this distribution of faculty by race provides adequate interaction between students and teachers of both races.

Because it is the Detroit Board's primary obligation to desegregate, we have examined carefully its plan to desegregate faculty and staff. That plan requires implementation in three distinct stages. To implement the first stage the Detroit Board has requested the court to reinstate the August 28, 1975, order. The second phase of the Board's plan adopts the HEW regulation which requires that faculty assignments be made so that the proportion of full-time minority classroom teachers at each school is between 75% and 125% of the proportion of such minority teachers existing on the faculty as a whole. Since the current faculty is 52.8% black, each school in the district would have a faculty between 39% and 65% black. The third and final stage of the Detroit Board's plan is quite unique in that no immediate faculty transfers are anticipated. Instead the Detroit Board would be authorized by court order to release or add teachers to the faculty in each school in such a way that would move that school closer to the racial composition of the faculty system wide.

The specific racial proportions sought by phase two of the Detroit Board's plan are arbitrary and do not withstand

scrutiny.[18] In planning for the implementation of phase two, Mr. Martin did not confer with principals of the affected schools to determine whether specific transfers would adversely impact their school. He merely examined the racial composition in each school by subject area and made a judgment as to which department, in his view, had an excess of black or white teachers. Tr. at 1108-1114. Such inflexible adherence to specific racial ratios will result in teacher transfers which do nothing more than alter faculty statistics and which bear no relationship to the ultimate purpose of achieving full desegregation of faculty and staff. For example, the Detroit Board proposes to transfer teachers from Central, Cooley, Kettering, King ,McKenzie, Mumford, Murray-Wright, Northeastern, Northwestern, and Southwestern despite the fact that each of these schools is already in compliance with the proposed parameters of phase two. Cooley High School, predominantly black by student enrollment, would undergo a faculty change from 45.8% to 43.7% black. Tr. at 1305. This would occur even though Cooley High School is now within the parameters of the third phase of the Detroit Board's proposal. Thus, to the extent that the goals of phase three of the Detroit Board's proposal are valid, Cooley students are impacted detrimentally by phase two.

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[18] Mr. Martin testified that the HEW regulations will provide sufficient latitude to account for qualifications to teach the grade level and subject, age, sex and other criteria for a balanced faculty, but he admitted that one motivation for choosing these parameters was his belief that such faculty racial proportions were necessary under applicable regulations of HEW to secure funding under the Emergency School Aid Act. Tr. at 1456.

We have already held that in a school district undergoing desegregation, HEW regulations are not controlling. A school district is bound by constitutional precepts and not governmental regulations. *Bradley* v. *Milliken*, 432 F.Supp. 885 (E.D. Mich. 1977). Arbitrary racial percentages are not designed to fit all school districts under all circumstances and they are no less undesirable merely because they have been predetermined by a government agency.

Phase three of the Detroit Board's proposal, however, is even more objectionable. It provides that when teachers are to be released from or added to a particular school, the Board will have sole discretion to assign teachers so that the faculty in each school more closely reflects the racial composition of the system as a whole. Tr. at 911-12. If the Board's contention that phase three is essential to afford plaintiffs an adequate remedy is correct, plaintiffs may never receive their remedy. This is so because in regions where student enrollment is declining, a teacher is usually released and the position discontinued as no longer needed. Therefore, in Regions 1, 5 and 8 where there is a pronounced decline in enrollment,[19] most of the faculty transactions effected by phase three will involve the release of teachers. Because additional releases will also occur from normal faculty attrition such as resignations, retirements and leaves of absence, black students in Regions 1, 5 and 8 could not expect to interact with a larger number of white teachers, they could only expect to interact with a smaller number of black teachers. Since phase three is not adverse to the faculty assignment goals advanced by the plaintiffs, they contend that the court may not prevent the Board from implementing it. This may be true, but we decline to enter an order sanctioning a proposal that we think makes little or no sense.

Furthermore, the ramifications of phase three upon the current collective bargaining agreement between the Board and the DFT are incalculable. Under the agreement, releases from a particular school are based on seniority, subject to the provision that no release will occur if it causes a school faculty to exceed 70% of one race. BX-2. Phase three of the Board's proposal would effectively obliterate all seniority rights of DFT members and replace one provision of the collective

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[19] Regions 1 and 8, for example, have experienced a 6% annual decline in student enrollment from 1974-1977, while Region 7 now 31.9% white, has experienced a decline of 9% annually. Tr. Sep. 6, 1977 at 23-28.

bargaining agreement with Board discretion. This provision of the collective bargaining agreement has never been adjudged to have caused a segregated faculty, so that when the DFT intervened in this litigation, it did so as an innocent third party. Although we would not permit the DFT's collective bargaining agreement to stand in the way of providing plaintiffs' class with an adequate remedy, neither will we unnecessarily enter a court order providing for the wholesale eradication of a provision in its collective bargaining agreement. We conclude that the Detroit Board's proposal is arbitrary, self-serving and not designed to maximize interaction between students and teachers of both races, and we reject it.

Based upon the factual record made by the parties, we find that it is necessary for the court to set guidelines to further desegregate faculty and staff for several reasons. First, while it is true that no school has a distribution of more than 70% of teachers of one race, one chance in three for students to interact with teachers of both races is not adequate. The school system can do better. The exhibits offered by the Detroit Board show particularly that in Regions 1, 5 and 8, there has been little improvement in the desegregative experience children are receiving from their teachers.[20] The problem with the present faculty distribution is that schools with a predominance of black students also have a predominantly black faculty, while schools which were traditionally white by student enrollment have a predominantly white faculty.[21]

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[20] For example, in Region 1, 33 of 43 schools had a faculty more than 60% black in 1975; in April 1977, the comparable figure was 30 of 34. In Region 5, the faculty in 27 of 34 schools was over 60% black in 1975, while the comparable figure in 1977 was 26 of 34 schools. In Region 8, 22 of 38 schools had faculties that were more than 60% black in 1975, while in 1977, 16 of 35 schools had a faculty with similar composition. *See* BX-10B, 4, 4A.

[21] This is true not only with faculty but also with principals and de-

Second, the decline in student enrollment and a lack of coordination in hiring policies between the central and regional boards affects the rate of change in the composition of faculty in the majority of the schools. Mr. Martin explained the method utilized by the central board when releasing teachers because of declining enrollment. The principal of the affected school makes the initial determination that a position is expendable. The teacher with the least seniority in that position is then released, unless the release of that teacher would cause the faculty composition to exceed 70% of one race, in which case the teacher of the opposite race with the least seniority is released. Tr. at 59-60. If the enrollment in a region remains stable, vacancies that arise by resignations, retirement and leaves of absence present the only opportunity for the Detroit Board to implement phase three. In those regions where enrollment is declining, however, there is a tendency to close out the position when a vacancy occurs because it is no longer needed. Thus, the Detroit Board's ability to increase the desegregative experience of Detroit students and "balance staff" as to qualifications, sex, age and experience is somewhat limited in regions experiencing a declining enrollment. Tr. at 97-98. Although the DFT contends that the long range trend is toward a more "balanced staff" in all schools, plaintiffs should not be required to wait for their remedy.

Finally, regional hiring practices are not uniform and tend to impede efforts to achieve further faculty desegregation. The central board prepares a list of qualified and eligible applicants, but each regional board determines who will be hired from the list. Although this decision is subject to approval by the central board, approval is almost always received. Tr. at 819-24. Thus, if a majority black region hires more black teachers than white, it would further impede the central

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partment heads as well. For example, in Region 1 when 88% of the schools had a predominantly black faculty, 57% of the schools had black principals and 66% black department heads. We agree with the plaintiffs that this cannot be the result of random assignment patterns.

board's efforts to balance staff. Tr. at 819.[22] The hiring of more black than white teachers appears to be occurring in all regions except Region 2.

Thus, we conclude that plaintiffs are entitled to an order that will afford a greater degree of interaction between Detroit students and teachers of both races, that provides adequate flexibility to account for qualifications of the teacher to teach the subject and grade level, and further permits the balancing of faculty in each school by race, teaching experience, and sex. We believe that the guidelines which we order implemented can be accomplished with minimum disruption of the present composition of faculty and staff.

The DFT argues, as it has throughout this litigation, that Judge Roth's holding that neither the Detroit Board nor the DFT engaged in *de jure* acts of segregation in faculty assignments precludes a remedial order reassigning faculty. The Court of Appeals rejected this argument reasoning that faculty assignments help "to mitigate the fact that the majority of Detroit's children are left in schools that are overwhelmingly one race." 540 F.2d at 247. In *Milliken II*, making the same analogy, the Supreme Court said:

> [I]n United States v. Montgomery County Bd. of Educ., 395 U.S. 225 (1969), the Court concerned itself not with pupil assignment, but with the desegregation of faculty and staff as part of the process of dismantling a dual system. In doing so, the Court, there speaking through Mr. Justice Black, focused on the reason for judicial concerns going beyond pupil assignment: "The dispute . . . deals with faculty and staff desegregation, a goal that he have recognized to be an important aspect of *the basic task of achieving a public school system wholly free from racial discrimination.*" *Id.* at 231-232. (Emphasis supplied.)

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[22] There is no evidence that the central board's "balance of staff" goal has been followed by regional boards in their hiring practices.

> *Montgomery County,* therefore, stands firmly for the proposition that matters other than pupil assignment must on occasion be addressed by federal courts to eliminate the effects of prior segregation. 433 U.S. at 282-83 (emphasis original).

Finally, the DFT argues that the interim decision of *Teamsters* v. *United States,* 431 U.S. 395 (1977) precludes this court from making any additional faculty assignments. In *Teamsters* the Court held that seniority systems which are otherwise "bonafide" are entitled to enforcement according to their terms even if they "perpetuate" or "lock in" the effects of prior discrimination. The DFT argues that "by virtue of the decision in Teamsters, any remedy which might otherwise be directed by this court is proscribed if it impacts on this otherwise lawful seniority system." Brief of DFT at 30, 32. We think this argument lacks merit. *Teamsters* dealt with congressional intent in enacting Title VII of the 1964 Civil Rights Act. It did not consider constitutional violations or the power of a district court when correcting prior *de jure* acts of segregation. In any event, the order which we enter does not impact on otherwise lawful seniority rights, since it directs transfers which take into account seniority rights of teachers affected by the order.

3. Monitoring Commission

The necessity to reconsider the pupil and faculty reassignment portions of our remedial decree has occasioned a reevaluation of the remaining aspect of that decree, the quality education components. The task of monitoring the implementation of court-ordered remedial programs was assigned to a court-created Monitoring Commission, a group of citizens intended to reflect the city's racial and ethnic composition. 402 F.Supp. at 1145. The Monitoring Commission has performed its mission admirably. Each participant has served faithfully and is well deserving of the respect and undying gratitude

of the community and court. They have served as the "eyes and ears" of the community and court, observing and reporting on the progress of the defendant Detroit Board's implementation of the remedial programs included in the plan. Notwithstanding the numerous reports submitted by the Commission, however, no party to this litigation has filed any pleadings to challenge in an adversary proceeding the reason for the Detroit Board's lagging implementation of the remedial programs. The silence of the parties, particularly the plaintiffs, leads the court to believe that the interest of all parties in this component has been reasonably satisfied.[23]

Although the Monitoring Commission has been a great benefit to the community and the court, its prolonged existence can have several seriously detrimental community effects as well. First, the Monitoring Commission may solidify unrealistic community aspirations that it can or will solve the difficult problems plaguing the school district. For example, we have, on another occasion, stated that this school board's principal difficulty concerns financing the cost of delivering quality desegregated educational services. 402 F.Supp. at 1119. The school board's financial crisis is as critical today as it was in 1975. It continues to face escalating educational costs at a time when student enrollment, upon which its financial resources depend, is decreasing at an alarming rate. A monitoring commission cannot solve this problem, yet it may unwittingly impede the school board's ability to achieve a solution.

Second, we are concerned that the prolonged existence of the Monitoring Commission will continue to stifle the growth of the School-Community Relations (parental involvement) component, a program we emphasized was essential to the continued vitality of a school district:

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[23] Generally, monitoring commissions serve year to year and after three years of court-ordered monitoring services it was only natural that we re-evaluate its mission.

> We agree with plaintiffs that an acceptable community relations plan should include provisions for school-community liaison and parental involvement. The school-community relations program should give real meaning to the decentralization anticipated by the Michigan Legislature and provide an effective vehicle for true community involvement in all the schools. To achieve maximum community participation the program should depend upon parental support; . . . . An effective community relations program must develop a partnership between the community and the schools and must cooperate with traditional groups such as parent-teacher organizations and local school advisory boards. There should be a cooperative flow of information from the school to the community and from the community to the school . . . . The school community relations organization should receive complete encouragement, budgetary support, direct assistance and a free flow of information from school authorities. 402 F.Supp. at 1143.

A fully decentralized school-community group can, in partnership with the school board, better solve the problems facing this school district. Court-sanctioned monitoring commissions cannot actually solve problems since they are neither a policy-making body nor a super school board. If the community believes that an independent group of citizens is required to monitor the business of the school administration, it is better that such a group spring from the community rather than from a court decree. Moreover, a viable community relations program can more economically perform its own monitoring functions.

Third, prolonged court-sponsored monitoring creates the danger that the group will take on the role of advisors to elected officials charged with the responsibility of managing the affairs of the school district. For example, some Monitoring Commission reports contain recommendations based upon information collected from the very source being monitored.

This is a function which is a step beyond monitoring. If recommendations and advice are to be given by a monitoring group, it is best that it come from a group that is created and supported by the community.

Fourth, court-sponsored monitoring commissions may well prompt the state defendants to relax their superintending control over the affairs of the local school board. It is the responsibility of the state defendants to monitor the steps taken to ascertain that Detroit children are receiving quality desegregated educational services. The obstacles which impede the delivery of quality education must be overcome by the state and local boards and broad based community groups. We are also concerned that the Monitoring Commission's budgetary requirements now being furnished by the state will continue to increase. Those requirements now exceed $200,000 annually. This amount can be used to better educational opportunities for Detroit school children. Surely, there are more economical methods for performing the monitoring function.[24]

Finally, we are deeply concerned that the members of the Monitoring Commission do not represent a fair cross section of the school community. Although the school district is predominantly black, the Monitoring Commission as presently constituted is predominatly white. We must be sensitive to unfavorable impressions likely to occur when a court-ordered white monitoring commission continues indefinitely to audit a predominatly black school administration, especially one that contains a remarkable number of highly competent staff members, totally sensitive to the needs of Detroit school children, black and white. Moreover, Detroit has a group of black leaders that is competent and interested in the needs of the school system. Prolonged court-sponsored monitoring could very well stifle the developing interest of black leaders.

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[24] For example, we could appoint a member with authority to conduct annual audits of school district records and submit a report to the parties; or the school administration could be required by court order to submit annual reports, supported by affidavit, to all interested parties.

We must bear in mind that the present school administration is burdened with the task of remedying the *de jure* acts of segregation committed by a white board some 20 years ago, the individual members of which have long ago abandoned the city. Court-sponsored monitoring cannot aid in that task. In light of the above, we question the wisdom and necessity of retaining court-sponsored monitoring services.

Accordingly, an order will be entered consistent with this opinion.

IT IS SO ORDERED.

/s/ ROBERT E. DeMASCIO
United States District Judge

Dated: August 7, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 35257

RONALD BRADLEY, et al.,

Plaintiffs,

v.

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,

Defendants.

ORDER

(August 7, 1978)

This cause having come before the court following the U. S. Sixth Circuit Court of Appeals remand for further consideration of our remedial plan excluding Regions 1, 5 and 8 and vacating our August 28, 1975 faculty reassignment order; and the court having conducted evidentiary hearings and having filed its Memorandum Opinion;

IT IS ORDERED that the defendant Detroit Board of Education shall, within fourteen (14) days from the date of this order, submit a plan for additional pupil reassignments in Region 1 with students from Regions 1 and 2 pursuant to the following guidelines:

1) Schools with students enrollment less than 50% black and greater than 70% black shall be included in the plan.

2) The plan shall attempt to reduce as many schools in Region 1 as practicable to no more than 70% black.

3) The plan shall make provisions for bilingual/bicultural

programs consistent with state law and prior orders of this court; where pupil reassignment materially alters current bilingual/bicultural programs, the Detroit Board shall create new programs to maintain the current level of bilingual/bicultural offerings.

4) Upon showing of good and sufficient cause, the Detroit Board may exclude a school from inclusion in the reassignment plan. Requiring transportation of students in excess of 25 minutes one way shall be presumed to establish good and sufficient cause. On the other hand, attempts to preserve the current concentration of bilingual/bicultural programs in Region 2 shall not be good and sufficient cause.

5) The Detroit Board shall forward copies of the proposed plan to the parties in this cause and each party may have ten (10) days thereafter to forward to the court briefs critiquing the Detroit Board's plan;

IT IS FURTHER ORDERED that the Detroit Board shall submit, within fourteen (14) days from the date of this order, a plan for reassignment of faculty pursuant to the following guidelines:

1) The plan shall provide for distribution of not more than 60% of teachers of one race in each school.

2) Such distribution shall balance faculty first by qualifications to teach the subject and grade level then by race, teaching experience, sex, and age.

3) Prior to any required transfer, the school administration shall consult with principals of each affected school to determine which teachers and/or subject areas the principal believes are expendable.

4) In making all transfers, the plan shall take into account seniority rights of teachers as set forth in the current Detroit Federation of Teachers' collective bargaining agreement.

5) Schools may have faculties that vary to 65% of one race

to accommodate appropriate balancing and to take into account stability of school and staff.

6) No transfer of teachers at a school shall occur if the faculty at that school does not exceed 60% of one race and further shall not occur if the faculty at that school does not exceed 65% of one race and must maintain that level to assure balance of staff or school stability.

7) When the Detroit Board finds it impossible to make transfers that reduce faculties to 60% of one race and remain consistent with the provisions of this order, it shall so state and provide a detailed explanation thereof;

IT IS FURTHER ORDERED that the parties hereto shall within ten (10) days from the date of this order detail in writing their views on why court-sponsored monitoring service should not be discontinued.

/s/ ROBERT E. DeMASCIO
United States District Judge

AMENDED JUDGMENT OF DISTRICT COURT DATED NOVEMBER 17, 1978 [460 F Supp 325]

UNITED STATES DISTRICT COURT,
E. D. MICHIGAN, S. D.

Ronald BRADLEY et al.,

Plaintiffs,

v.

William G. MILLIKEN, Governor of the State of Michigan, et al.,

Defendants.

Civ. No. 35257

Nov. 17, 1978.

MEMORANDUM

DeMASCIO, District Judge.

In response to the Sixth Circuit Court of Appeals remand for further consideration of our exclusion of Regions 1, 5 and 8, we entered our Memorandum and Order of August 7, 1978 reqiuring additional pupil reassignments between Regions 1 and 2. On August 21, 1978, the defendant Detroit Board of Education submitted to the court a proposed pupil reassignment plan as they were directed to do by this court's August 7, 1978 order. After having examined the Detroit Board's proposed pupil reassignment plan, we found that it was not

entirely clear in all respects and directed the Detroit Board to submit color keyed maps to clearly indicate which schools in Regions 1 and 2 were included in the plan and further to clearly reflect the number of Spanish surnamed students included in the plan. The Detroit Board submitted the color coded maps on September 1, 1978. On October 25, 1978, the Detroit Board submitted a revised proposed pupil reassignment plan that made minor changes in the transportation pattern between Regions 1 and 2.

No party, including the plaintiffs, has submitted a brief critiquing the Detroit Board's proposed reassignment plan, although paragraph 5 of our August 7, 1978 order stated that "each party may have ten days [after submission of the Detroit Board's plan] to forward to the court briefs critiquing the Detroit Board's plan." Since no party has objected, the court has reviewed the proposed plan, and we approve the plan as one that substantially conforms to the guidelines set forth in our August 7, 1978 order. Accordingly, a partial amendment to our May 11, 1976 Judgment will be entered.

IT IS SO ORDERED.

RULING ON ISSUE OF SEGREGATION BY DISTRICT COURT, DATED SEPTEMBER 27, 1971 [338 F Supp 582]

UNITED STATES DISTRICT COURT,
E. D. MICHIGAN, S. D.

Civ. A. No. 35257.

Ronald BRADLEY et al.,
Plaintiffs,

v.

William G. MILLIKEN et al.,
Defendants,

DETROIT FEDERATION OF TEACHERS, LOCAL #231,
American Federation of Teachers, AFL-CIO,
Defendant-Intervenor,

and

Denise Magdowski et al.,
Defendants-Intervenors.

(September 27, 1971.)

RULING ON ISSUE OF SEGREGATION

ROTH, District Judge.

This action was commenced August 18, 1970, by plaintiffs, the Detroit Branch of the National Association for the Advancement of Colored People[1] and individual parents and

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[1] The standing of the NAACP as a proper party plaintiff was not contested by the original defendants and the Court expresses no opinion on the matter.

students, on behalf of a class later defined by order of the Court dated February 16, 1971, to include "all school children of the City of Detroit and all Detroit resident parents who have children of school age." Defendants are the Board of Education of the City of Detroit, its members and its former superintendent of schools, Dr. Norman A. Drachler, the Governor, Attorney General, State Board of Education and State Superintendent of Public Instruction of the State of Michigan. In their complaint, plaintiffs attacked a statute of the State of Michigan known as Act 48 of the 1970 Legislature on the ground that it put the State of Michigan in the position of unconstitutionally interfering with the execution and operation of a voluntary plan of partial high school desegregation (known as the April 7, 1970 Plan) which had been adopted by the Detroit Board of Education to be effective beginning with the fall 1970 semester. Plaintiffs also alleged that the Detroit Public School System was and is segregated on the basis of race as a result of the official policies and actions of the defendants and their predecessors in office.

Additional parties have intervened in the litigation since it was commenced. The Detroit Federation of Teachers (DFT) which represents a majority of Detroit Public school teachers in collective bargaining negotiations with the defendant Board of Education, has intervened as a defendant, and a group of parents has intervened as defendants.

Initially the matter was tried on plaintiffs' motion for preliminary injunction to restrain the enforcement of Act 48 so as to permit the April 7 Plan to be implemented. On that issue, this Court ruled that plaintiffs were not entitled to a preliminary injunction since there had been no proof that Detroit has a segregated school system. The Court of Appeals found that the "implementation of the April 7 Plan was thwarted by State action in the form of the Act of the Legislature of Michigan," (433 F.2d 897, 902), and that such action could not be interposed to delay, obstruct or nullify steps lawfully taken for the purpose of protecting rights guaranteed by the Fourteenth Amendment.

The plaintiffs then sought to have this Court direct the defendant Detroit Board to implement the April 7 Plan by the start of the second semester (February, 1971) in order to remedy the deprivation of constitutional rights wrought by the unconstitutional statute. In response to an order of the Court, defendant Board suggested two other plans, along with the April 7 Plan, and noted priorities, with top priority assigned to the so-called "Magnet Plan." The Court acceded to the wishes of the Board and approved the Magnet Plan. Again, plaintiffs appealed but the appellate court refused to pass on the merits of the plan. Instead, the case was remanded with instructions to proceed immediately to a trial on the merits of plaintiffs' substantive allegations about the Detroit School System. 438 F.2d 945 (6th Cir. 1971).

Trial, limited to the issue of segregation, began April 6, 1971 and concluded on July 22, 1971, consuming 41 trial days, interspersed by several brief recesses necessitated by other demands upon the time of Court and counsel. Plaintiffs introduced substantial evidence in support of their contentions, including expert and factual testimony, demonstrative exhibits and school board documents. At the close of plaintiffs' case, in chief, the Court ruled that they had presented a prima facie case of state imposed segregation in the Detroit Public Schools; accordingly, the Court enjoined (with certain exceptions) all further school construction in Detroit pending the outcome of the litigation.

The State defendants urged motions to dismiss as to them. These were denied by the Court.

At the close of proofs intervening parent defendants (Denise Magdowski, et al.) filed a motion to join, as parties 85 contiguous "suburban" school districts – all within the so-called Larger Detroit Metropolitan area. This motion was taken under advisement pending the determination of the issue of segregation.

It should be noted that, in accordance with earlier rulings of the Court, proofs submitted at previous hearings in the

cause, were to be and are considered as part of the proofs of the hearing on the merits.

In considering the present racial complexion of the City of Detroit and its public school system we must first look to the past and view in perspective what has happened in the last half century. In 1920 Detroit was a predominantly white city — 91% — and its population younger than in more recent times. By the year 1960 the largest segment of the city's white population was in the age range of 35 to 50 years, while its black population was younger and of childbearing age. The population of 0-15 years of age constituted 30% of the total population of which 60% were white and 40% were black. In 1970 the white population was principally aging — 45 years — while the black population was younger and of childbearing age. Childbearing blacks equaled or exceeded the total white population. As older white families without children of school age leave the city they are replaced by younger black families with school age children, resulting in a doubling of enrollment in the local neighborhood school and a complete change in student population from white to black. As black inner city residents move out of the core city they "leap-frog" the residential area nearest their former homes and move to areas recently occupied by whites.

The population of the City of Detroit reached its highest point in 1950 and has been declining by approximately 169,500 per decade since then. In 1950, the city population constituted 61% of the total population of the standard metropolitan area and in 1970 it was but 36% of the metropolitan area population. The suburban population has increased by 1,978,000 since 1940. There has been a steady out-mitgration of the Detroit population since 1940. Detroit today is principally a conglomerate of poor black and white plus the aged. Of the aged, 80% are white.

If the population trends evidenced in the federal decennial census for the years 1940 through 1970 continue, the total black population in the City of Detroit in 1980 will be approximately 840,000, or 53.6% of the total. The total popula-

tion of the city in 1970 is 1,511,000 and, if past trends continue, will be 1,338,000 in 1980. In school year 1960-61, there were 285,512 students in the Detroit Public Schools of which 130,-765 were black. In school year 1966-67, there were 297,035 students, of which 168,299 were black. In school year 1970-71 there were 289,743 students of which 184,194 were black. The percentage of black students in the Detroit Public Schools in 1975-76 will be 72.0%, in 1980-81 will be 80.7% and in 1992 it will be virtually 100% if the present trends continue. In 1960, the non-white population, ages 0 years to 19 years, was as follows:

0 - 4 years	42%
5 - 9 years	36%
10 - 14 years	28%
15 - 19 years	18%

In 1970 the non-white population, ages 0 years to 19 years, was as follows:

0 - 4 years	48%
5 - 9 years	50%
10 - 14 years	50%
15 - 19 years	40%

The black population as a percentage of the total population in the City of Detroit was:

(a)	1900	1.4%
(b)	1910	1.2%
(c)	1920	4.1%
(d)	1930	7.7%
(e)	1940	9.2%
(f)	1950	16.2%
(g)	1960	28.9%
(h)	1970	43.9%

The black population as a percentage of total student population of the Detroit Public Schools was as follows:

(a)	1961	45.8%
(b)	1963	51.3%
(c)	1964	53.0%
(d)	1965	54.8%
(e)	1966	56.7%
(f)	1967	58.2%
(g)	1968	59.4%
(h)	1969	61.5%
(i)	1970	63.8%

For the years indicated the housing characteristics in the City of Detroit were as follows:

(a) 1960 total supply of housing units was 553,000
(b) 1970 total supply of housing units was 530,770

The percentage decline in the white students in the Detroit Public Schools during the period 1961-1970 (53.6% in 1960; 34.8% in 1970) has been greater than the percentage decline in the white population in the City of Detroit during the same period (70.8% in 1960; 55.21% in 1970), and correlatively, the percentage increase in black students in the Detroit Public Schools during the nine-year period 1961-1970 (45.8% in 1961; 63.8% in 1970) has been greater than the percentage increase in the black population of the City of Detroit during the ten-year period 1960-1970 (28.9% in 1960; 43.9% in 1970). In 1961 there were eight schools in the system without white pupils and 73 schools with no Negro pupils. In 1970 there were 30 schools with no white pupils and 11 schools with no Negro pupils, an increase in the number of schools without white pupils of 22 and a decrease in the number of schools without Negro pupils of 62 in this ten-year period. Between 1968 and 1970 Detroit experienced the largest increase in percentage of black students in the student population of any major north-

ern school district. The percentage increase in Detroit was 4.7% as contrasted with –

New York	2.0%
Los Angeles	1.5%
Chicago	1.9%
Philadelphia	1.7%
Cleveland	1.7%
Milwaukee	2.6%
St. Louis	2.6%
Columbus	1.4%
Indianapolis	2.6%
Denver	1.1%
Boston	3.2%
San Francisco	1.5%
Seattle	2.4%

In 1960, there were 266 schools in the Detroit School System. In 1970, there were 319 schools in the Detroit School System.

In the Western, Northwestern, Northern, Murray, Northeastern, Kettering, King and Southeastern high school service areas, the following conditions exist at a level significantly higher than the city average:

(a) Poverty in children
(b) Family income below poverty level
(c) Rate of homicides per population
(d) Number of households headed by females
(e) Infant mortality rate
(f) Surviving infants with neurological defects
(g) Tuberculosis cases per 1,000 population
(h) High pupil turnover in schools

The City of Detroit is a community generally divided by racial lines. Residential segregation within the city and throughout the larger metropolitan area is substantial, pervasive and of long standing. Black citizens are located in sep-

arate and distinct areas within the city and are not generally to be found in the suburbs. While the racially unrestricted choice of black persons and economic factors may have played some part in the development of this pattern of residential segregation, it is, in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people. On the record there can be no other finding.

Governmental actions and inaction at all levels, federal, state and local, have combined, with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area. It is no answer to say that restricted practices grew gradually (as the black population in the area increased between 1920 and 1970), or that since 1948 racial restrictions on the ownership of real property have been removed. The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community – as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of "harmonious" neighborhoods, *i. e.*, racially and economically harmonious. The conditions created continue. While it would be unfair to charge the present defendants with what other governmental officers or agencies have done, it can be said that the actions or the failure to act by the responsible school authorities, both city and state, were linked to that of these other governmental units. When we speak of governmental action we should not view the different agencies as a collection of unrelated units. Perhaps the most that can be said is that all of them, including the school authorities, are, in part, responsible for the segregated condition which exists. And we note that just as there is an interaction between residential patterns and the racial composition of the schools, so there is a corresponding effect on the residential pattern by the racial composition of the schools.

Turning now to the specific and pertinent (for our purposes) history of the Detroit school system so far as it involves both the local school authorities and the state school authorities, we find the following:

During the decade beginning in 1950 the Board created and maintained optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions. In 1959 there were eight basic optional attendance areas affecting 21 schools. Optional attendance areas provided pupils living within certain elementary areas a choice of attendance at one of two high schools. In addition there was at least one optional area either created or existing in 1960 between two junior high schools of opposite predominant racial components. All of the high school optional areas, except two, were in neighborhoods undergoing racial transition (from white to black) during the 1950s. The two exceptions were: (1) the option between Southwestern (61.6% black in 1960) and Western (15.3% black); (2) the option between Denby (0% black) and Southeastern (30.9% black). With the exception of the Denby-Southeastern option (just noted) all of the options were between high schools of opposite predominant racial compositions. The Southwestern-Western and Denby-Southeastern optional areas are all white on the 1950, 1960 and 1970 census maps. Both Southwestern and Southeastern, however, had substantial white pupil populations, and the option allowed whites to escape integration. The natural, probable, foreseeable and actual effect of these optional zones was to allow white youngsters to escape identifiably "black" schools. There had also been an optional zone (eliminated between 1956 and 1959) created in "an attempt . . . to separate Jews and Gentiles within the system," the effect of which was that Jewish youngsters went to Mumford High School and Gentile youngsters went to Cooley. Although many of these optional areas had served their purpose by 1960 due to the fact that most of the areas had become predominantly black, one optional area (Southwestern-Western affecting Wilson Junior High grad-

uates) continued until the present school year (and will continue to effect 11th and 12th grade white youngsters who elected to escape from predominantly black Southwestern to predominantly white Western High School). Mr. Henrickson, the Board's general fact witness, who was employed in 1959 to, *inter alia,* eliminate optional areas, noted in 1967 that: "In operation Western appears to be still the school to which white students escape from predominantly Negro surrounding schools." The effect of eliminating this optional area (which affected only 10th graders for the 1970-71 school year) was to decrease Southwestern from 86.7% black in 1969 to 74.3% black in 1970.

The Board, in the operation of its transportation to relieve overcrowding policy, has admittedly bused black pupils past or away from closer white schools with available space to black schools. This practice has continued in several instances in recent years despite the Board's avowed policy, adopted in 1967, to utilize transportation to increase integration.

With one exception (necessitated by the burning of a white school), defendant Board has never bused white children to predominantly black schools. The Board has not bused white pupils to black schools despite the enormous amount of space available in inner-city schools. There were 22,961 vacant seats in schools 90% or more black.

The Board has created and altered attendance zones, maintained and altered grade structures and created and altered feeder school patterns in a manner which has had the natural, probable and actual effect of continuing black and white pupils in racially segregated schools. The Board admits at least one instance where it purposefully and intentionally built and maintained a school and its attendance zone to contain black students. Throughout the last decade (and presently) school attendance zones of opposite racial compositions have been separated by north-south boundary lines, despite the Board's awareness (since at least 1962) that drawing boundary lines in an east-west direction would result in significant integration. The natural and actual effect of these acts and failures to act

has been the creation and perpetuation of school segregation. There has never been a feeder pattern or zoning change which placed a predominantly white residential area into a predominantly black school zone or feeder pattern. Every school which was 90% or more black in 1960, and which is still in use today, remains 90% or more black. Whereas 65.8% of Detroit's black students attended 90% or more black schools in 1960, 74.9% of the black students attended 90% or more black schools during the 1970-71 school year.

The public schools operated by defendant Board are thus segregated on a racial basis. This racial segregation is in part the result of the discriminatory acts and omissions of defendant Board.

In 1966 the defendant State Board of Education and Michigan Civil Rights Commission issued a Joint Policy Statement on Equality of Education Opportunity, requiring that

> "Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities. . . . Each of these situations presents an opportunity for integration."

Defendant State Board's "School Plant Planning Handbook" requires that

> "Care in site locations must be taken if a serious transportation problem exists or if housing patterns in an area would result in a school largely segregated on racial, ethnic, or socio-economic lines."

The defendant City Board has paid little heed to these statements and guidelines. The State defendants have similarly failed to take any action to effectuate these policies. Exhibit NN reflects construction (new or additional) at 14 schools which opened for use in 1970-71; of these 14 schools, 11 opened over 90% black and one opened less than 10% black. School construction costing $9,222,000 is opening at Northwestern

High School which is 99.9% black, and new construction opens at Brooks Junior High, which is 1.5% black, at a cost of $2,500,000. The construction at Brooks Junior High plays a dual segregatory role: not only is the construction segregated, it will result in a feeder pattern change which will remove the last majority white school from the already almost all-black Mackenzie High School attendance area.

Since 1959 the Board has constructed at least 13 small primary schools with capacities of from 300 to 400 pupils. This practice negates opportunities to integrate, "contains" the black population and perpetuates and compounds school segregation.

The State and its agencies, in addition to their general responsibility for and supervision of public education, have acted directly to control and maintain the pattern of segregation in the Detroit schools. The State refused, until this session of the legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned, while providing in many neighboring, mostly white, suburban districts the full range of state supported transportation. This and other financial limitations, such as those on bonding and the working of the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effort, have created and perpetuated systematic educational inequalities.

The State, exercising what Michigan courts have held to be is "plenary power" which includes power "to use a statutory scheme, to create, alter, reorganize or even dissolve a school district, despite any desire of the school district, its board, or the inhabitants thereof," acted to reorganize the school district of the City of Detroit.

The State acted through Act 48 to impede, delay and minimize racial integration in Detroit schools. The first sentence of Sec. 12 of the Act was directly related to the April 7, 1970 desegregation plan. The remainder of the section sought to prescribe for each school in the eight districts criterion of "free choice" (open enrollment) and "neighborhood schools"

("nearest school priority acceptance"), which had as their purpose and effect the maintenance of segregation.

In view of our findings of fact already noted we think it unnecessary to parse in detail the activities of the local board and the state authorities in the area of school construction and the furnishing of school facilities. It is our conclusion that these activities were in keeping, generally, with the discriminatory practices which advanced or perpetuated racial segregation in these schools.

It would be unfair for us not to recognize the many fine steps the Board has taken to advance the cause of quality education for all in terms of racial integration and human relations. The most obvious of these is in the field of faculty integration.

Plaintiffs urge the Court to consider allegedly discriminatory practices of the Board with respect to the hiring, assignment and transfer of teachers and school administrators during a period reaching back more than 15 years. The short answer to that must be that black teachers and school administrative personnel were not readily available in that period. The Board and the intervening defendant union have followed a most advanced and exemplary course in adopting and carrying out what is called the "balanced staff concept" – which seeks to balance faculties in each school with respect to race, sex and experience, with primary emphasis on race. More particularly, we find:

1. With the exception of affirmative policies designed to achieve racial balance in instructional staff, no teacher in the Detroit Public Schools is hired, promoted or assigned to any school by reason of his race.

2. In 1956, the Detroit Board of Education adopted the rules and regulations of the Fair Employment Practices Act as its hiring and promotion policy and has adhered to this policy to date.

3. The Board has actively and affirmatively sought out and hired minority employees, particularly teachers and administrators, during the past decade.

4. Between 1960 and 1970, the Detroit Board of Education has increased black representation among its teachers from 23.3% to 42.1%, and among its administrators from 4.5% to 37.8%.

5. Detroit has a higher proportion of black administrators than any other city in the country.

6. Detroit ranked second to Cleveland in 1968 among the 20 largest northern city school districts in the percentage of blacks among the teaching faculty and in 1970 surpassed Cleveland by several percentage points.

7. The Detroit Board of Education currently employs black teachers in a greater percentage than the percentage of adult black persons in the City of Detroit.

8. Since 1967, more blacks than whites have been placed in high administrative posts with the Detroit Board of Education.

9. The allegation that the Board assigns black teachers to blacks schools is not supported by the record.

10. Teacher transfers are not granted in the Detroit Public Schools unless they conform with the balanced staff concept.

11. Between 1960 and 1970, the Detroit Board of Education reduced the percentage of schools without black faculty from 36.3% to 1.2%, and of the four schools currently without black faculty, three are specialized trade schools where minority faculty cannot easily be secured.

12. In 1968, of the 20 largest northern city school districts, Detroit ranked fourth in the percentage of schools having one or more black teachers and third in the percentage of schools having three or more black teachers.

13. In 1970, the Board held open 240 positions in schools with less than 25% black, rejecting white applicants for these positions until qualified black applicants could be found and assigned.

14. In recent years, the Board has come under pressure from large segments of the black community to assign male black administrators to predominantly black schools to serve as male role models for students, but such assignments have

been made only where consistent with the balanced staff concept.

15. The numbers and percentages of black teachers in Detroit increased from 2,275 and 21.6%, respectively, in February, 1961, to 5,106 and 41.6%, respectively, in October, 1970.

16. The number of schools by percent black of staffs changed from October, 1963 to October, 1970 as follows:

> Number of schools without black teachers — decreased from 41, to 4.
>
> Number of schools with more than 0%, but less than 10% black teachers — decreased from 58, to 8.
>
> Total number of schools with less than 10% black teachers — decreased from 99, to 12.
>
> Number of schools with 50% or more black teachers — increased from 72, to 124.

17. The number of schools by percent black of staffs changed from October, 1969 to October, 1970, as follows:

> Number of schools without black teachers — decreased from 6, to 4.
>
> Number of schools with more than 0%, but less than 10% black teachers — decreased from 41, to 8.
>
> Total number of schools with less than 10% black teachers — decreased from 47, to 12.
>
> Number of schools with 50% or more black teachers — increased from 120, to 124.

18. The total number of transfers necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, and ignoring all other elements is, as of 1970, 1,826.

19. If account is taken of other elements necessary to assure quality integrated education, including qualifications to teach the subject area and grade level, balance of experience,

and balance of sex, and further account is taken of the uneven distribution of black teachers by subject taught and sex, the total number of transfers which would be necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, if attainable at all, would be infinitely greater.

20. Balancing of staff by qualifications for subject and grade level, then by race, experience and sex, is educationally desirable and important.

21. It is important for students to have a successful role model, especially black students in certain schools, and at certain grade levels.

22. A quota of racial balance for faculty in each school which is equivalent to the system-wide ratio and without more is educationally undesirable and arbitrary.

23. A severe teacher shortage in the 1950s and 1960s impeded integration-of-faculty opportunities.

24. Disadvantageous teaching conditions in Detroit in the 1960s — salaries, pupil mobility and transiency, class size, building conditions, distance from teacher residence, shortage of teacher substitutes, etc. — made teacher recruitment and placement difficult.

25. The Board did not segregate faculty by race, but rather attempted to fill vacancies with certified and qualified teachers who would take offered assignments.

26. Teacher seniority in the Detroit system, although measured by systemwide service, has been applied consistently to protect against involuntary transfers and "bumping" in given schools.

27. Involuntary transfers of teachers have occurred only because of unsatisfactory ratings or because of decrease of teacher services in a school, and then only in accordance with balanced staff concept.

28. There is no evidence in the record that Detroit teacher seniority rights had other than equitable purpose or effect.

29. Substantial racial integration of staff can be achieved, without disruption of seniority and stable teaching relation-

ships, by application of the balanced staff concept to naturally occurring vacancies and increases and reductions of teacher services.

30. The Detroit Board of Education has entered into successive collective bargaining contracts with the Detroit Federation of Teachers, which contracts have included provisions promoting integration of staff and students.

The Detroit School Board has, in many other instances and in many other respects, undertaken to lessen the impact of the forces of segregation and attempted to advance the cause of integration. Perhaps the most obvious one was the adoption of the April 7 Plan. Among other things, it has denied the use of its facilities to groups which practice racial discrimination; it does not permit the use of its facilities for discriminatory apprentice training programs; it has opposed state legislation which would have the effect of segregating the district; it has worked to place black students in craft positions in industry and the building trades; it has brought about a substantial increase in the percentage of black students in manufacturing and construction trade apprenticeship classes; it became the first public agency in Michigan to adopt and implement a policy requiring affirmative act of contractors with which it deals in insure equal employment opportunities in their work forces; it has been a leader in pioneering the use of multi-ethnic instructional material, and in so doing has had an impact on publishers specializing in producing school texts and instructional materials; and it has taken other noteworthy pioneering steps to advance relations between the white and black races.

[1, 2] In conclusion, however, we find that both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit. As we assay the principles essential to a finding of de jure segregation, as outlined in rulings of the United States Supreme Court, they are:

1. The State, through its officers and agencies, and usually, the school administration, must have taken some action or actions with a purpose of segregation.

2. This action or these actions must have created or aggravated segregation in the schools in question.

3. A current condition of segregation exists.

We find these tests to have been met in this case. We recognize that causation in the case before us is both several and comparative. The principal causes undeniably have been population movement and housing patterns, but state and local governmental actions, including school board actions, have played a substantial role in promoting segregation. It is, the Court believes, unfortunate that we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, then it should make no difference whether we classify it de jure or de facto. Our objective, logically, it seems to us, should be to remedy a condition which we believe needs correction. In the most realistic sense, if fault or blame must be found it is that of the community as a whole, including, of course, the black components. We need not minimize the effect of the actions of federal, state and local governmental officers and agencies, and the actions of loaning institutions and real estate firms, in the establishment and maintenance of segregated residential patterns – which lead to school segregation – to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is at once both a place of confinement and a refuge. There is enough blame for everyone to share.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action under 28 U.S.C. §§1331(a), 1343 (3) and (4), 2201 and 2202; 42 U.S.C. §§ 1983, 1988, and 2000d.

[3] 2. In considering the evidence and in applying legal standards it is not necessary that the Court find that the policies and practices, which it has found to be discriminatory, have as their motivating forces any evil intent or motive. Keys v. Sch. Dist. # 1, Denver, D.C., 303 F.Supp. 279. Motive, ill will and bad faith have long ago been rejected as a requirement to invoke the protection of the Fourteenth Amendment against racial discrimination. Sims v. Georgia, 389 U.S. 404, 407-408, 88 S.Ct. 523, 19 L.Ed.2d 634.

[4] 3. School districts are accountable for the natural, probable and foreseeable consequences of their policies and practices, and where racially identifiable schools are the result of such policies, the school authorities bear the burden of showing that such policies are based on educationally required, non-racial considerations. Keyes v. Sch. Dist., *supra*, and Davis v. Sch. Dist. of Pontiac, D.C., 309 F.Supp. 734, and 6 Cir., 443 F.2d 573.

[5] 4. In determining whether a constitutional violation has occurred, proof that a pattern of racially segregated schools has existed for a considerable period of time amounts to a showing of racial classification by the state and its agencies, which must be justified by clear and convincing evidence. State of Alabama v. United States, 5 Cir. 304 F.2d 583.

[6] 5. The Board's practice of shaping school attendance zones on a north-south rather than an east-west orientation, with the result that zone boundaries conformed to racial residential dividing lines, violated the Fourteenth Amendment. Northcross v. Bd. of Ed. of Memphis, 6 Cir., 333 F.2d 661.

[7] 6. Pupil racial segregation in the Detroit Public School System and the residential racial segregation resulting primarily from public and private racial discrimination are interdependent phenomena. The affirmative obligation of the defendant Board has been and is to adopt and implement pupil assignment practices and policies and compensate for and avoid incorporation into the school system the effects of residential racial segregation. The Board's building upon housing

segregation violates the Fourteenth Amendment. See, Davis v. Sch. Dist. of Pontiac, *supra*, and authorities there noted.

[8] 7. The Board's policy of selective optional attendance zones, to the extent that it facilitated the separation of pupils on the basis of race, was in violation of the Fourteenth Amendment. Hobson v. Hansen, D.C., 269 F.Supp. 401, aff'd sub nom., Smuck v. Hobson, 132 U.S.App.D.C. 372, 408 F.2d 175.

[9] 8. The practice of the Board of transporting black students from overcrowded black schools to other identifiably black schools, while passing closer identifiably white schools, which could have accepted these pupils, amounted to an act of segregation by the school authorities. Spangler v. Pasadena City Bd. of Ed., D.C., 311 F.Supp. 501.

[10] 9. The manner in which the Board formulated and modified attendance zones for elementary schools had the natural and predictable effect of perpetuating racial segregation of students. Such conduct is an act of de jure discrimination in violation of the Fourteenth Amendment. United States v. School District 151, D.C., 286 F.Supp. 786; Brewer v. School Board of City of Norfolk, 4 Cir., 397 F.2d 37.

[11] 10. A school board may not, consistent with the Fourteenth Amendment, maintain segregated elementary schools or permit educational choices to be influenced by community sentiment or the wishes of a majority of voters. Cooper v. Aaron, 358 U.S. 1, 12-13, 15-16, 78 S.Ct. 1401, 3 L.Ed.2d 5.

> "A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be." Lucas v. 44th Gen'l Assembly of Colorado, 377 U.S. 713, 736-737, 84 S.Ct. 1459, 1474, 12 L.Ed.2d 632.

[12] 11. Under the Constitution of the United States and the constitution and laws of the State of Michigan, the responsibility for providing educational opportunity to all children on constitutional terms is ultimately that of the state. Turner v. Warren County Board of Education, D.C., 313 F.Supp. 380; Art. VIII, §§ 1 and 2, Mich. Constitution; Daszkiewicz v. De-

troit Bd. of Ed. of City of Detroit, 301 Mich. 212, 3 N.W.2d 71.

[13] 12. That a state's form of government may delegate the power of daily administration of public schools to officials with less than state-wide jurisdiction does not dispel the obligation of those who have broader control to use the authority they have consistently with the constitution. In such instances the constitutional obligation toward the individual school children is a shared one. Bradley v. Sch. Bd. of City of Richmond, D.C., 51 F.R.D. 139, 143.

13. Leadership and general supervision over all public education is vested in the State Board of Education. Art. VIII, § 3, Mich. Constitution of 1963. The duties of the State Board and superintendent include, but are not limited to, specifying the number of hours necessary to constitute a school day; approval until 1962 of school sites; approval of school construction plans; accreditation of schools; approval of loans based on state aid funds; review of suspensions and expulsions of individual students for misconduct [Op.Atty.Gen., July 7, 1970, No. 4705]; authority over transportation routes and disbursement of transportation funds; teacher certification and the like. M.S.A. 15.1023(1), M.C.L.A. § 388.1001. State law provides review procedures from actions of local or intermediate districts (see M.S.A. 15.3442, M.C.L.A. § 340.442), with authority in the State Board to ratify, reject, amend or modify the actions of these inferior state agencies. See M.S.A. 15.3467; 15.1919 (61); 15.1919(68b); 15.2299(1); 15.1961; 15.3402, M.C.L.A. §§ 340.467, 388.621, 388.628(a), 388.681, 388.851, 340.402; Bridgehampton School District No. 2 Fractional of Carsonville, Mich. v. Supt. of Public Instruction, 323 Mich. 615, 36 N.W.2d 166. In general, the state superintendent is given the duty "[t]o do all things necessary to promote the welfare of the public schools and public educational instructions and provide proper educational facilities for the youth of the state." M.S.A. 15.3252, M.C.L.A. § 340.252. See also M.S.A. 15.2299(57), M.C.L.A. § 388.717, providing in certain instances for reorganization of school districts.

14. State officials, including all of the defendants, are charged under the Michigan constitution with the duty of providing pupils an education without discrimination with respect to race. Art. VIII, § 2, Mich.Constitution of 1963. Art. I, § 2, of the constitution provides:

> "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation."

15. The State Department of Education has recently established an Equal Educational Opportunities section having responsibility to identify racially imbalanced school districts and develop desegregation plans. M.S.A. 15.3355, M.C.L.A. § 340.355, provides that no *school* or department shall be kept for any person or persons on account of race or color.

16. The state further provides special funds to local districts for compensatory education which are administered on a per school basis under direct review of the State Board. All other state aid is subject to fiscal review and accounting by the state. M.S.A. 15.1919. See also M.S.A. 15.1919(68b), providing for special supplements to merged districts "for the purpose of bringing about uniformity of educational opportunity for all the pupils of the district." The general consolidation law M.S.A. 15.3401, M.C.L.A. § 340.401 authorizes annexation for even noncontiguous school districts upon approval of the superintendent of public instruction and electors, as provided by law. Op.Atty.Gen., Feb. 5, 1964, No. 4193. Consolidation with respect to so-called "first class" districts, *i. e.*, Detroit, is generally treated as an annexation with the first class district being the surviving entity. The law provides procedures covering all necessary considerations. M.S.A. 15.3184, 15.3186, M.C.L.A. §§ 340.184, 340.186.

17. Where a pattern of violation of constitutional rights is

established the affirmative obligation under the Fourteenth Amendment is imposed on not only individual school districts, but upon the State defendants in this case. Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5; Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256; U. S. v. State of Georgia, Civ. No. 12972 (N.D. Ga., December 17, 1970), rev'd on other grounds, 5 Cir., 428 F.2d 377; Godwin v. Johnston County Board of Education, D. C., 301 F.Supp. 1339; Lee v. Macon County Board of Education, 267 F.Supp. 458 (M.D.Ala.), aff'd sub. nom., Wallace v. United States, 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed.2d 422; Franklin v. Quitman County Board of Education, D.C., 288 F.Supp. 509; Smith v. North Carolina State Board of Education, 444 F.2d 6 (4th Cir., 1971).

The foregoing constitutes our findings of fact and conclusions of law on the issue of segregation in the public schools of the City of Detroit.

[14] Having found a de jure segregated public school system in operation in the City of Detroit, our first step, in considering what judicial remedial steps must be taken, is the consideration of intervening parent defendants' motion to add as parties defendant a great number of Michigan school districts located out county in Wayne County, and in Macomb and Oakland Counties, on the principal premise or ground that effective relief cannot be achieved or ordered in their absence. Plaintiffs have opposed the motion to join the additional school districts, arguing that the presence of the State defendants is sufficient and all that is required, even if, in shaping a remedy, the affairs of these other districts will be affected.

In considering the motion to add the listed school districts we pause to note that the proposed action has to do with relief. Having determined that the circumstances of the case require judicial intervention and equitable relief, it would be improper for us to act on this motion until the other parties to the action have had an opportunity to submit their proposals for desegregation. Accordingly, we shall not rule on the mo-

tion to add parties at this time. Considered as a plan for desegregation the motion is lacking in specificity and is framed in the broadest general terms. The moving party may wish to amend its proposal and resubmit it as a comprehensive plan of desegregation.

JUDGMENT AND MANDATE OF THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT FOR CASE NOS. 78-1597; 79-1005, DATED MAY 30, 1980

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 78-1597, 79-1005

RONALD BRADLEY, ET AL.,
Plaintiffs-Appellees,

v.

WILLIAM G. MILLIKEN, GOVERNOR, ET AL.,
Defendants-Appellants,

and

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT, ET AL.,
Defendants-Appellants.

Before: EDWARDS, Chief Judge, and PHILLIPS and PECK, Senior Circuit Judges.

JUDGMENT

(Filed April 14, 1980)

APPEAL from the United States District Court for the Eastern District of Michigan.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Michigan and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby remanded for further proceedings.

No costs taxed. Each party will bear its own costs on this appeal.

ENTERED BY ORDER
OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

Issued as Mandate:

May 30, 1980
COSTS: NONE

Filing fee	$ -0-
Printing	$ -0-
Total	$ -0-

A True Copy.

Attest:

/s/ BARBARA J. BURNS
Deputy Clerk

JUDGMENT AND MANDATE OF U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT FOR CASE NO. 78-1598, DATED MAY 30, 1980

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 78-1598

RONALD BRADLEY, et al.,
Plaintiffs,

LULAC COUNCIL NO. 11054, et al.,
Proposed Plaintiffs Intervenors-Appellants,

v.

WILLIAM G. MILLIKEN, et al.,

and

BOARD OF EDUCATION of the School District of the City of Detroit, et al.,
Defendants-Appellees.

Before: EDWARDS, Chief Judge, and PHILLIPS and PECK, Senior Circuit Judges.

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COSTS: NONE

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A True Copy.

Attest:

/s/ BARBARA J. BURNS
Deputy Clerk

GENERAL SUPERINTENDENT'S AFFIDAVIT IN SUPPORT OF EMERGENCY APPLICATION FOR STAY

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No. ———

United States Sixth Circuit Court of Appeals
Nos. 78-1597; 78-1598; 79-1005

Lower Court No. 35257

BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF DETROIT,
a school district of the first class, et al,
Petitioners,

vs.

RONALD BRADLEY, et al; WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al; and, DETROIT FEDERATION OF TEACHERS,
Respondents.

GENERAL SUPERINTENDENT'S AFFIDAVIT IN SUPPORT OF EMERGENCY APPLICATION FOR STAY

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

ARTHUR JEFFERSON, being duly sworn, deposes and says that he is the General Superintendent of the Detroit Public Schools and that he makes this Affidavit on behalf of the above-mentioned Petitioner in the above-entitled cause, and in support of Petitioners' Emergency Application for Stay; that the facts set forth herein are true; that he is not disqualified from being a witness; and, if sworn as a witness, can testify competently to the following facts:

1. There are approximately 216,000 students in the Detroit public school system according to the 1979-80 Fourth Friday enrollment count. Of this figure, 182,214 students are black and 29,165 students are white. Thus, the racial makeup of the system as a whole is approximately 85 percent black and 13 percent white.

2. The Detroit public school system encompasses eight administrative regions, established by state law, designed to implement a decentralized system of administration for a first class school district under Michigan law. Following are the 1979 enrollment figures and percentage of black students by region:

REGION	1979 ENROLLMENT	1979 PERCENTAGE OF BLACK STUDENTS
1	18,345	94.3
2	28,455	60.4
3	28,866	88.2
4	36,341	85.6
5	27,416	99.2
6	26,114	79.4
7	19,032	76.2
8	23,794	97.8

3. According to the *resident* student population statistics,

racially mixed residential areas may currently be found in all parts of the City of Detroit, including areas bordering suburbs.

4. As a result of the implementation of the pupil reassignment component of the Detroit-only desegregation plan in 1976, the current actual racial composition in every Detroit school is at least 30 percent black and therefore considered desegregated according to the pupil transportation guidelines ordered by the District Court and approved by the Sixth Circuit Court of Appeals.

5. The Detroit school system currently has 290 permanent school buildings in operation. There are only 31 schools in the system with sufficient while students enrolled to be theoretically considered for exchange with those predominantly black schools in the geographical area known as Regions 1, 5 and 8 which extends in an L-shape in a north-south direction down the middle of the system to the waterfront and then in an easterly direction paralleling the waterfront to the eastern-most end of the District.

6. The exchange of white students from those 31 schools mathematically available for reassignment would require, in most instances, the busing of white students approximately five to six miles past several other predominantly black schools to the other designated predominantly black schools located in Regions 1, 5 and 8. While the transportation of a small number of white students between Regions 2 and 6 with Region 1 can be accomplished without long-distance busing, the transportation of available white students from other schools in the District would require far longer bus routes than currently exist in the System and would disrupt existing transportation for desegregation purposes and their desegregated school settings.

7. Should a revision in the pupil transportation component of the desegregation plan be ordered as a result of the April 14, 1980 remand order of the Sixth Circuit Court of Appeals, there are major activities and preparations which would have to take place to implement the broader pupil

transportation plan. These activities include development and completion of pupil reassignments; development of feasible bus routes and schedules; acquisition of a property site for the construction of additional bus storage and maintenance facilities to accommodate the additional school buses necessary to implement the revised transportation plan; the hiring and training of additional bus drivers, transportation aides, mechanics and team leaders; and, the notification of parents of pupil reassignments and bus information.

8. That since 1971, the Detroit school system has undergone a series of financial crises as a result of the loss of property tax revenues by virtue of urban renewal projects, highway construction in the City of Detroit, the exodus of businesses and industries to the suburbs along with the outward population flow from the City and the passage of Act No. 234 of 1975, the Single Business Tax which excludes business inventories from local state equalized valuation [SEV].

9. During the same period of time in the past decade, the system was experiencing escalating educational costs forcing the Detroit Board into a "survival" budget commencing with the 1973 school year. As a result, the system was forced to provide only minimal educational services while being required to eliminate many educational programs.

10. By 1973, the system had accumulated a $68 million dollar deficit, was within four days of closing its doors and required special legislation to finance its debt over a period of years by utilizing a portion of the operating budget for repayment.

11. By law, the Detroit Board is required to operate within a balanced budget which has necessitated a continuance of the "survival" budget.

12. Expenditures for educational programs have been reduced and postponed each year since 1971. Cuts in the educational program of the District which occurred in 1973 and in November, 1976 as a result of the financial crisis have never been restored.

13. The cumulative effects of past cut backs are in evidence and have serious consequences for educational programs. Continuing these cuts merely compounds the damage. Each year it becomes more costly to restore those services because of the inflationary spiral.

14. Since 1974, the Detroit Board has placed four propositions for new, additional millage before the electorate. Three of those four propositions have failed.

15. The Detroit school system has sustained budget deficits in two of the past three years while merely providing the same level of educational services as that previously obtained. Out of an estimated 1979-80 general fund budget of $516.2 million, the system was projected to have a cash deficit of $14.6 million. However, programmatic and service cutbacks in the amount of $14.6 million have balanced the budget with reduced offerings.

16. At the present time there is no possibility of the Detroit Board obtaining additional revenue to restore excluded programs and personnel, much less fund a broader-based pupil transportation component.

17. To the extent that additional Detroit Board funds are required to increase pupil transportation efforts, the level of funding for other educational services has to decrease.

18. Further, your Affiant sayeth not.

/s/ DR. ARTHUR JEFFERSON,
General Superintendent of Schools
Detroit Public Schools

Subscribed and sworn to before me this 9th day of May, 1980.

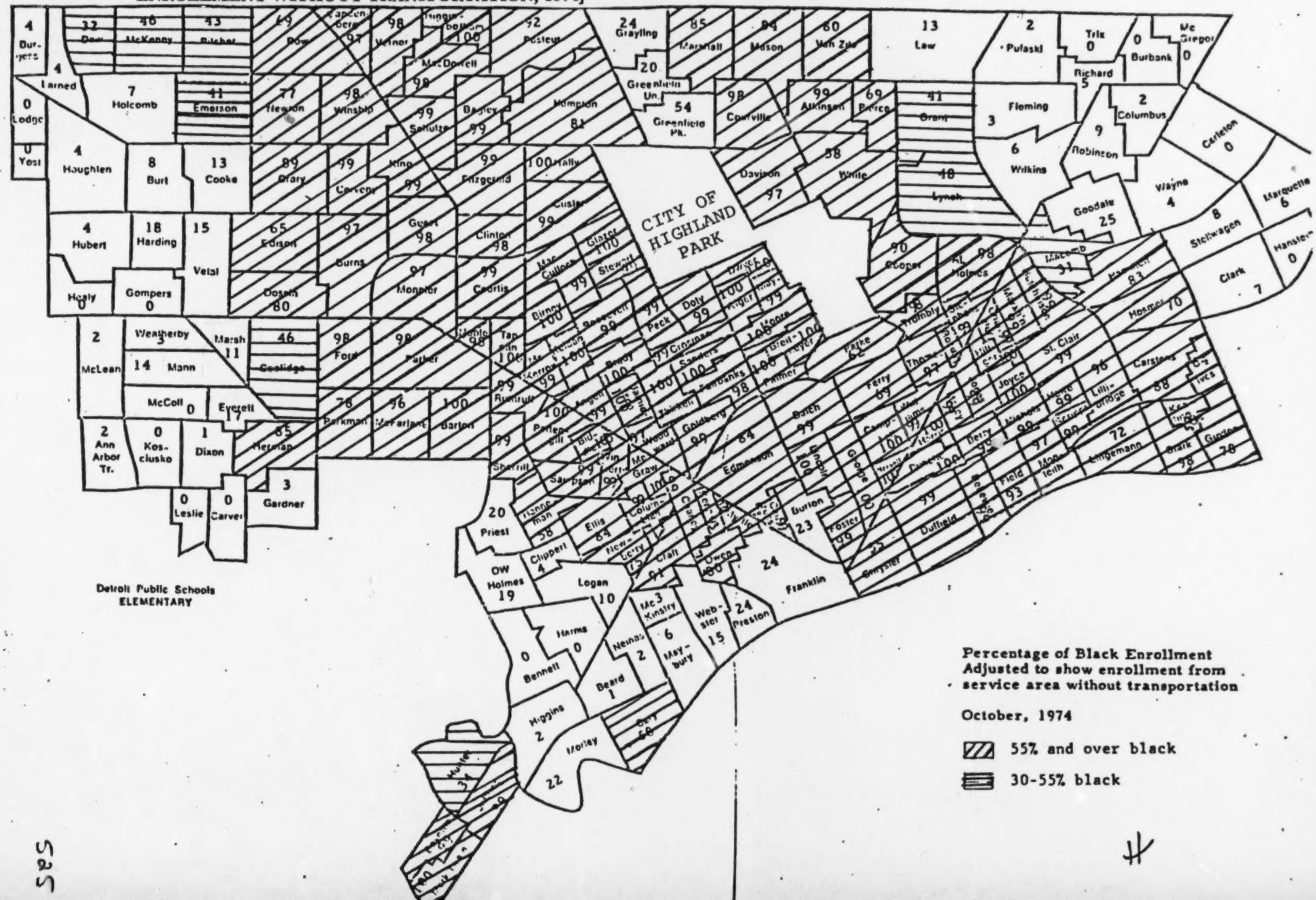
/s/ LINDA LEE HIGHBERG
Notary Public
Macomb County, Michigan (Acting in Wayne)

My commission expires: 12/28/83

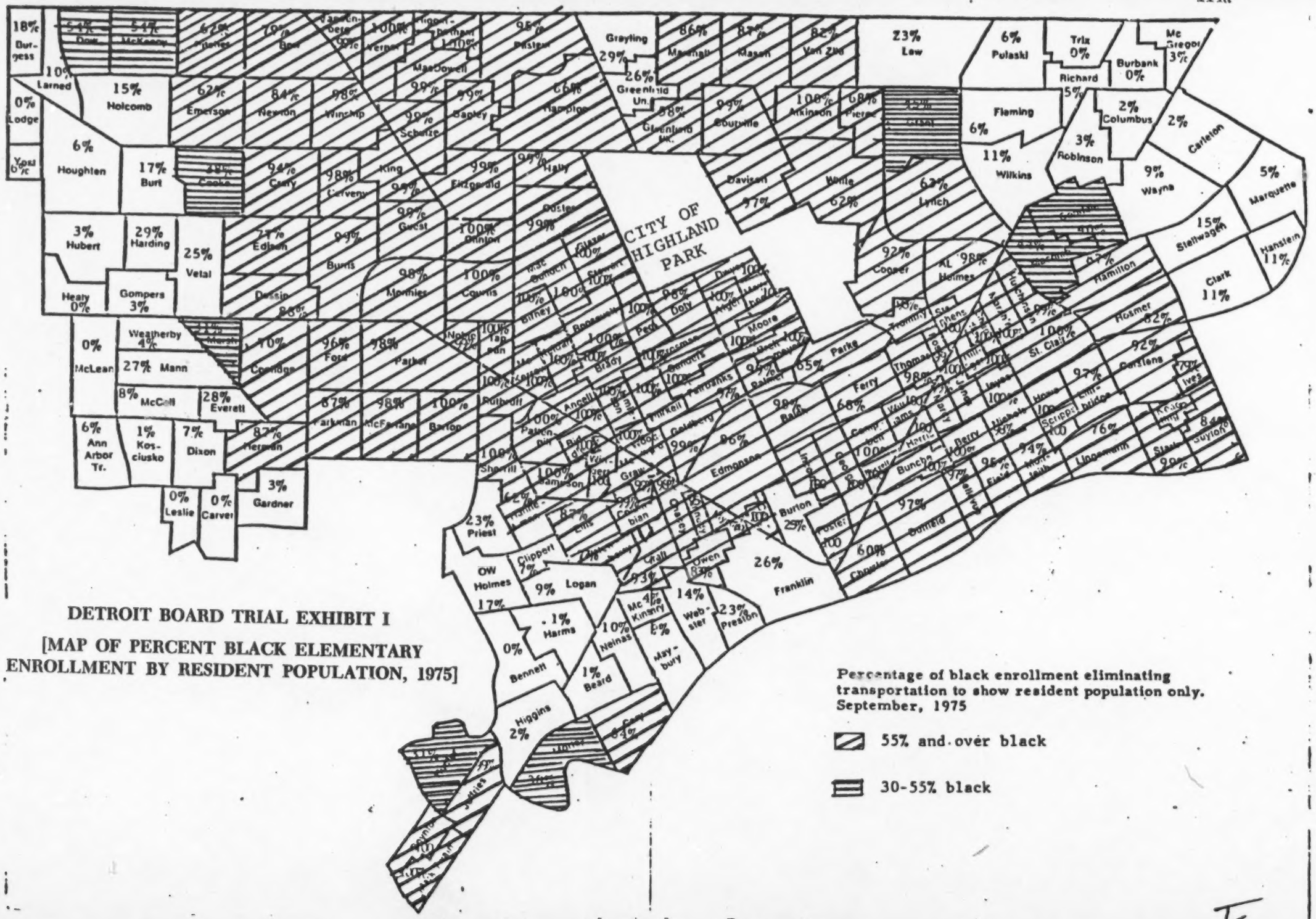
525

DETROIT BOARD TRIAL EXHIBIT H

[MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT WITHOUT TRANSPORTATION, 1974]



525



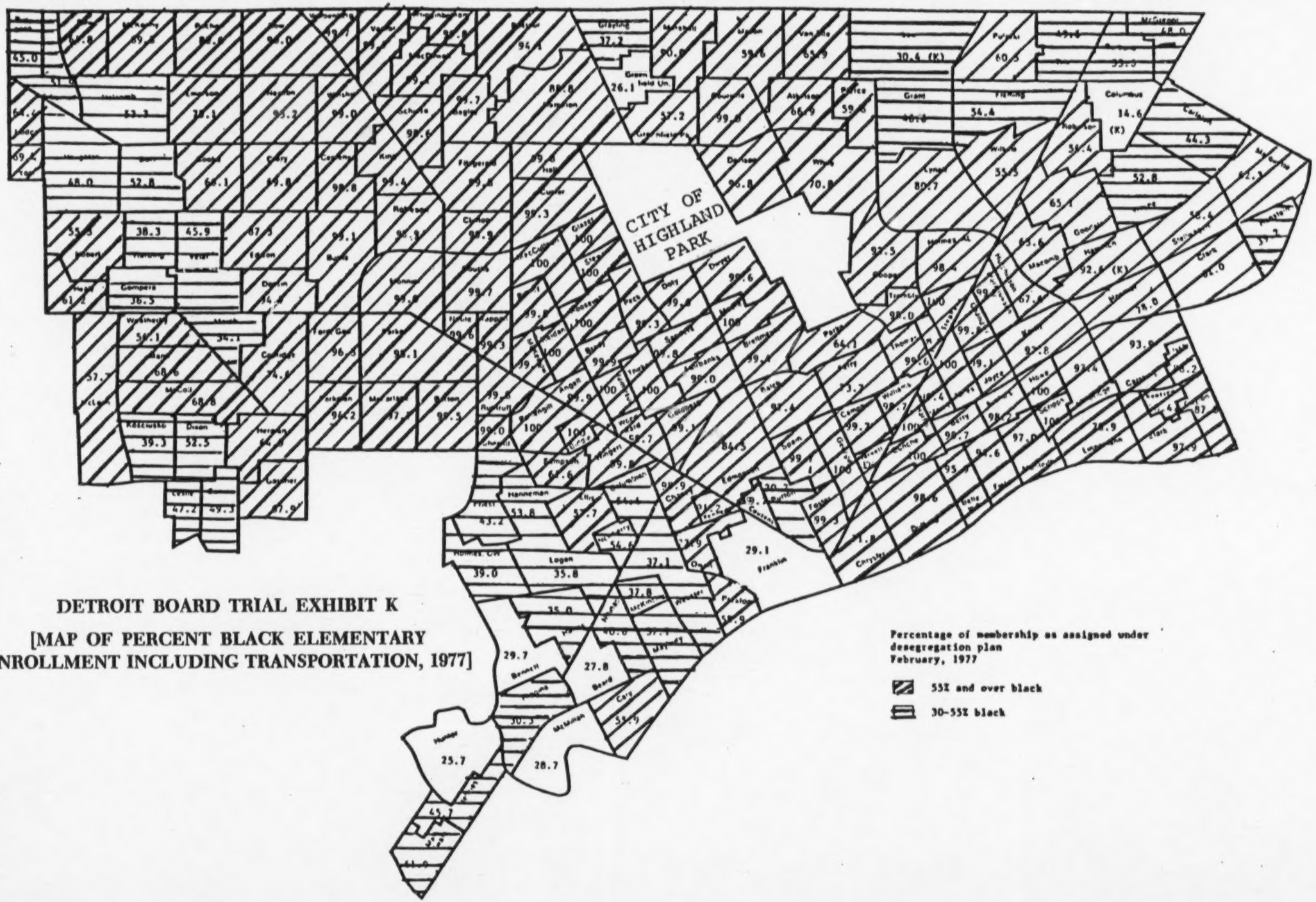
DETROIT BOARD TRIAL EXHIBIT I

[MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT BY RESIDENT POPULATION, 1975]

I

[MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT BY RESIDENT POPULATION, 1977]

526

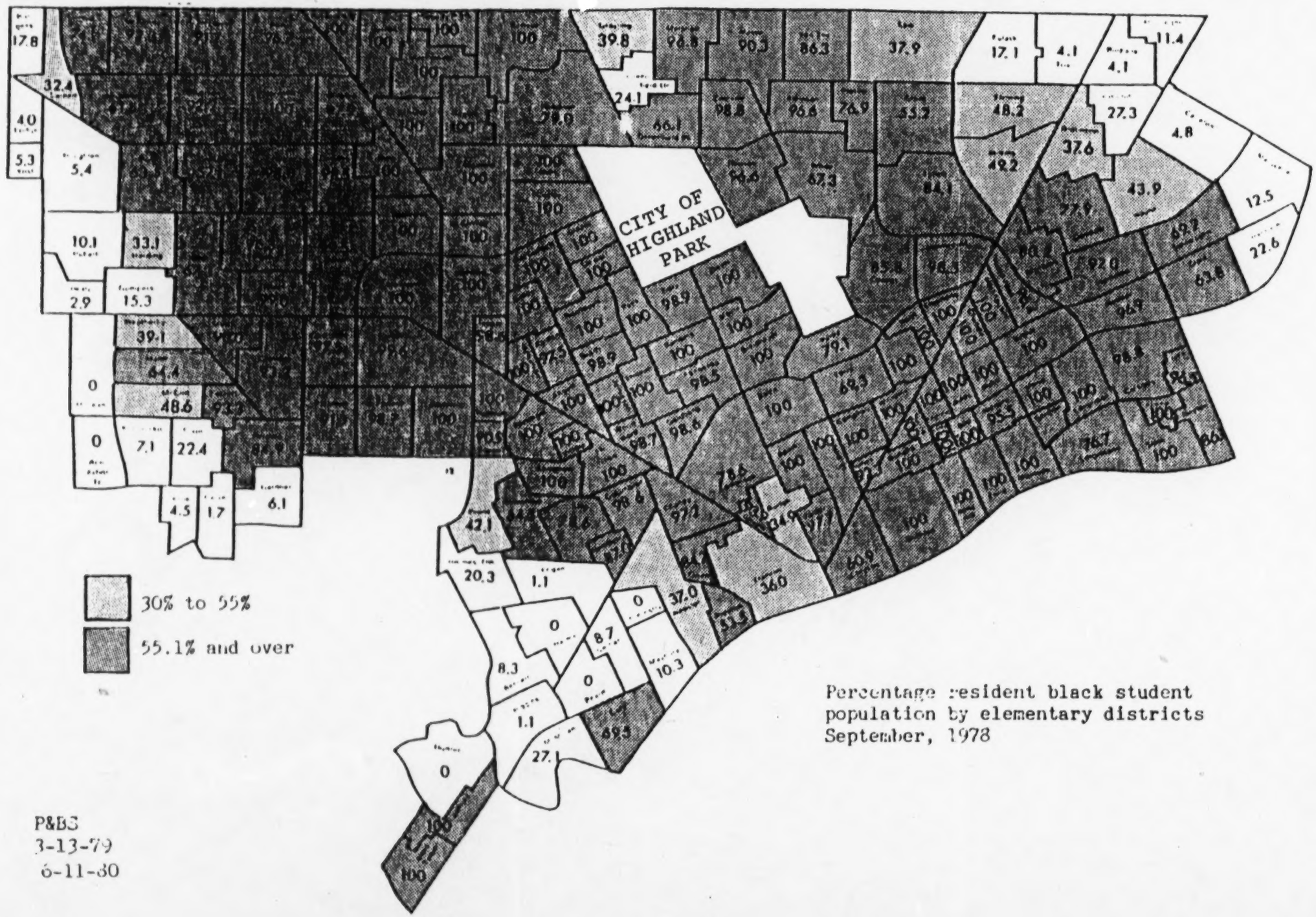


DETROIT BOARD TRIAL EXHIBIT K

[MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT INCLUDING TRANSPORTATION, 1977]

K

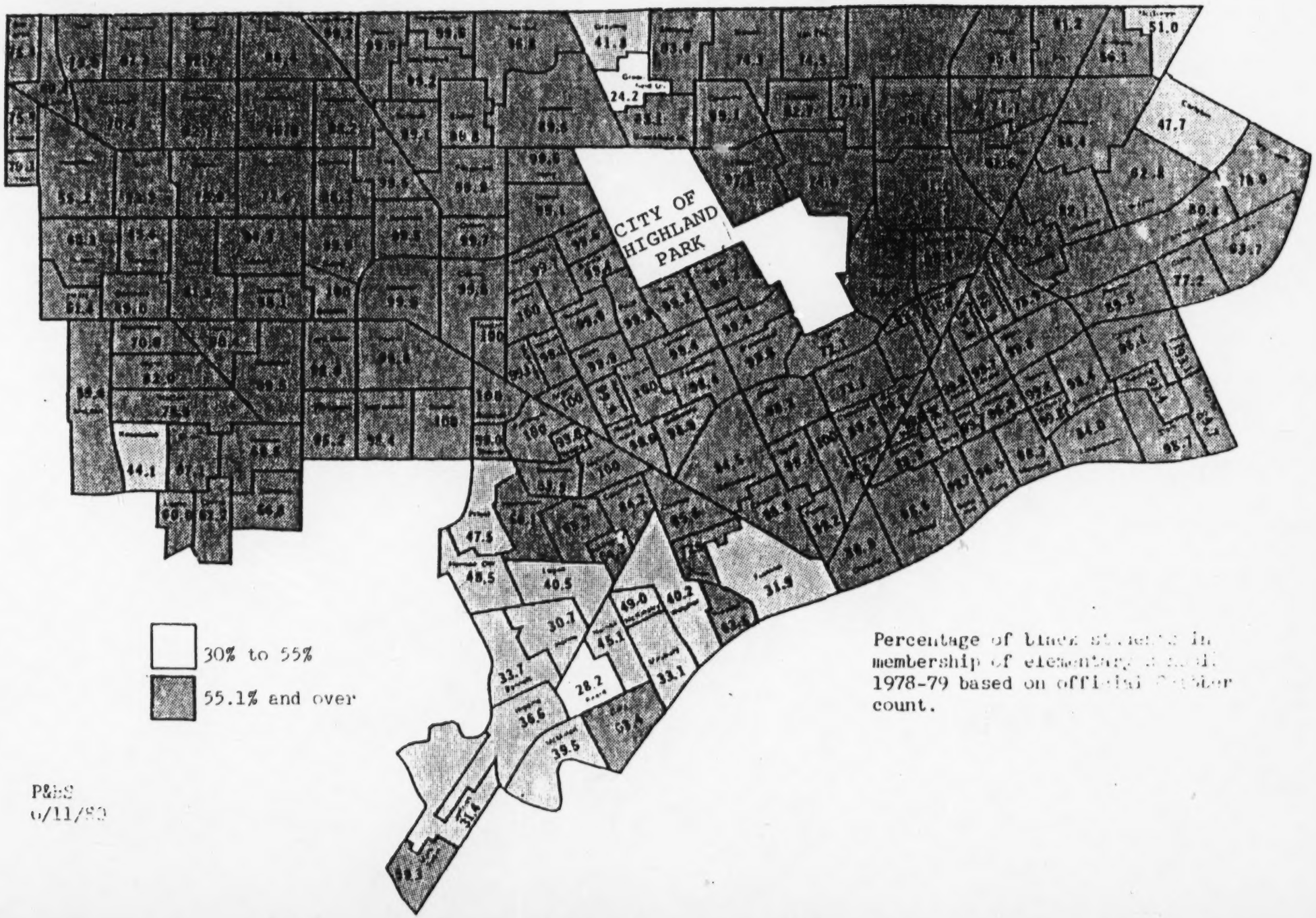
MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT WITHOUT TRANSPORTATION, 1978



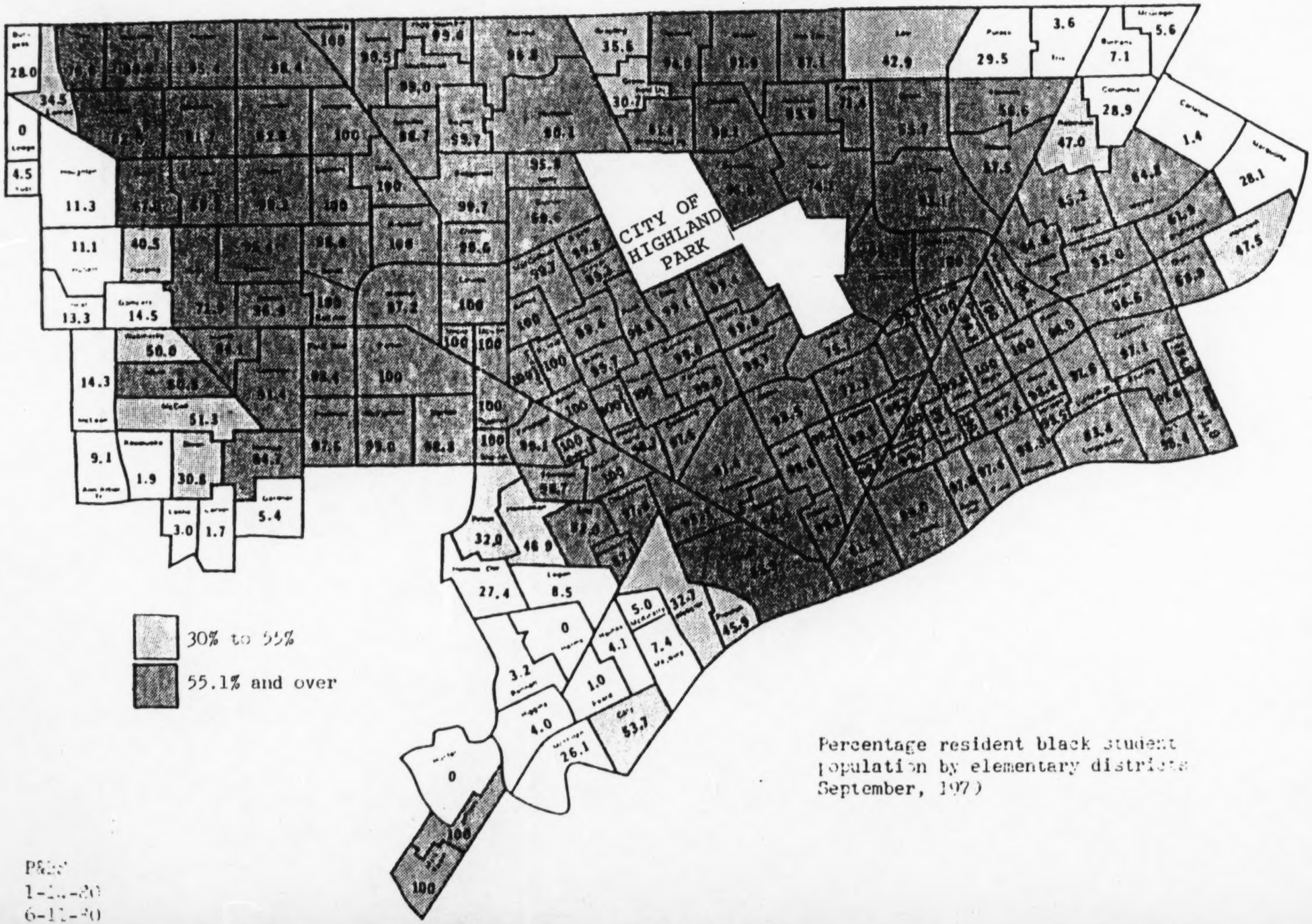
Percentage resident black student population by elementary districts September, 1978

P&BS
3-13-79
6-11-80

MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT INCLUDING TRANSPORTATION, 1978



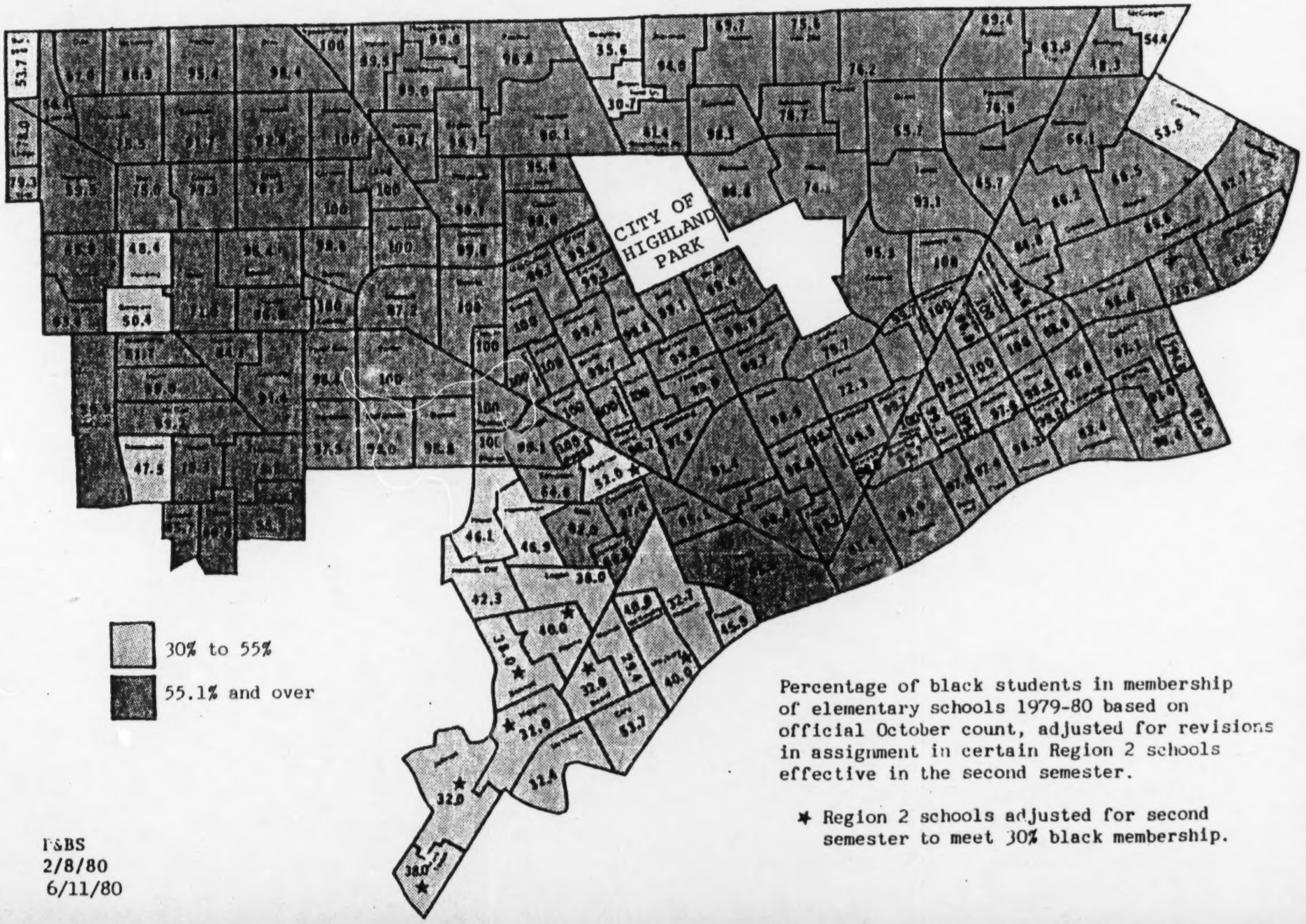
MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT WITHOUT TRANSPORTATION, 1979



Percentage resident black student population by elementary districts September, 1979

P&S
1-24-80
6-12-80

MAP OF PERCENT BLACK ELEMENTARY ENROLLMENT INCLUDING TRANSPORTATION, 1979

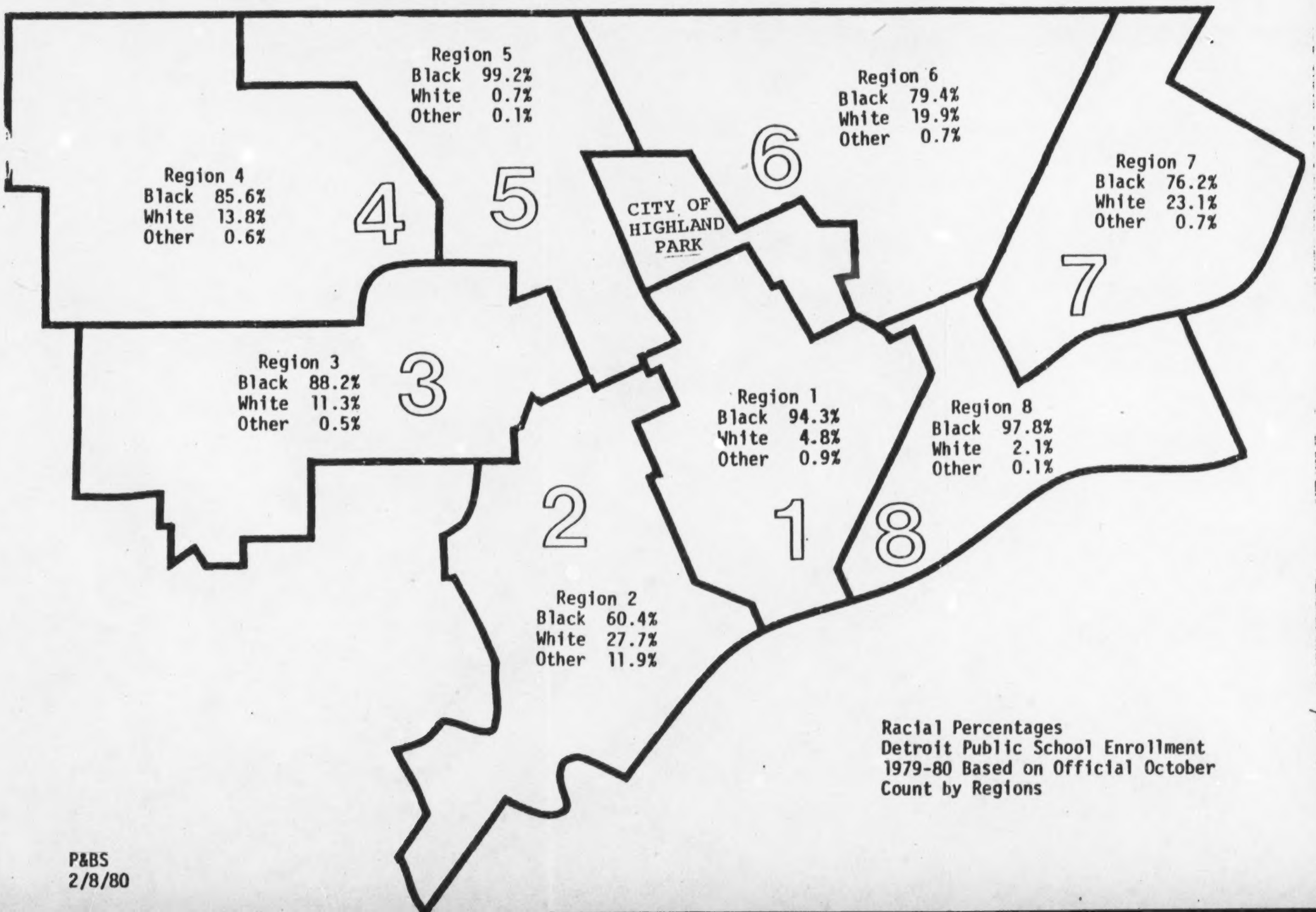


Percentage of black students in membership of elementary schools 1979-80 based on official October count, adjusted for revisions in assignment in certain Region 2 schools effective in the second semester.

★ Region 2 schools adjusted for second semester to meet 30% black membership.

P&BS
2/8/80
6/11/80

REGIONAL MAP OF DETROIT SCHOOL DISTRICT



Racial Percentages
Detroit Public School Enrollment
1979-80 Based on Official October
Count by Regions

P&BS
2/8/80

DETROIT BOARD TRIAL EXHIBIT M
[TOTAL ELEMENTARY BLACK STUDENTS IN REGIONS 1, 5 AND 8 AS OF FEBRUARY, 1977]

Number of [Elementary] Black Students in Regions 1, 5, 8
February, 1977

Region	Total K-5	Black K-5	Black 1-5
1	10,812	9,657	7,792
5	17,046	16,716	14,234
8	13,441	12,874	10,418
	41,299	39,247	32,439

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DETROIT BOARD TRIAL EXHIBIT O

[RACIAL MEMBERSHIP FOR GRADES 1-5 FOR ALL SCHOOLS LESS THAN 50 PERCENT BLACK AS OF FEBRUARY, 1977]

		Black		Spanish Speaking		White		Other	
	Total	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Region 1									
Burton	285	89	31.2	4	1.4	156	52.7	36	
Franklin	303	85	28.1	49	16.2	154	50.8	15	
	588	174	29.6	53	9.0	310	52.7	51	
Region 2									
Beard	431	143	33.2	62	14.4	210	48.7	16	
Bennett	506	195	38.5	64	12.6	247	48.8	0	
Harms	423	176	41.6	18	4.3	226	53.4	3	
Higgins	444	163	36.7	42	9.5	233	52.5	6	
Holmes, O.W.	419	184	43.9	26	6.2	202	48.2	7	
Hunter	206	61	29.6	14	6.8	129	62.6	2	
Jeffries	438	163	37.2	22	5.0	239	54.6	14	
Logan	482	196	40.7	50	10.4	232	48.1	4	
Mark Twain	477	199	41.7	61	12.8	209	43.8	8	
Maybury	465	192	41.3	118	25.4	153	32.9	2	
McKinstry	384	163	42.4	79	18.6	140	36.4	2	
McMillan	281	77	27.4	39	14.2	162	57.7	3	
Neinas	504	243	48.2	86	17.1	174	34.5	1	
Priest	933	419	44.9	76	8.1	419	44.9	19	
Webster	567	207	36.5	218	38.4	136	24.0	6	
	6,960	2,781	40.0	975	14.0	3,111	44.7	93	1.3
Region 3									
Carver	544	311		7		225		1	
Kosciusko	217	112		1		102		2	
Leslie	354	188		2		164			
	1,115	611	54.8	10	.09	491	44.0	3	

	Total	Black Number	Black Percent	Spanish Speaking Number	Spanish Speaking Percent	White Number	White Percent	Other Number	Other Percent
Region 4									
Burgess	214	108		1		103		2	
Gompers	453	179		7		262		5	
Harding	603	237		8		353		5	
Vetal	578	269		1		308			
	1,848	793	42.9	17	.09	1,026	59.5	12	.06
Region 6									
Grant	331	171				160			
Grayling	559	211				348			
Greenfield Union	564	152	27.0	1	.02	409	72.5	2	
Trix	355	210		1		141		3	
	1,809	744	41.2	2	.01	1,058	58.5	5	.02
Region 7									
Carleton	449	245				203		1	
Hanstein	265	121		3		140			
McGregor	244	145				99			
	958	511	53.3	3	.03	442	46.1	2	.02

DETROIT BOARD TRIAL EXHIBITS P/Q

[PERCENT BLACK STUDENTS IN HIGH SCHOOLS AND MIDDLE SCHOOLS – 1975, 1976, 1977]

Percentage Black Students in Senior High Schools 1975, 1976 and Estimated 1977

	1975	1976	Estimated 1977
Region 1			
Murray	98.6	98.7	98.0
Northeastern	94.2	95.7	94.3
Northern	99.6	99.3	99.7
Region 2			
Chadsey	61.0	64.3	66.0
Northwestern	99.9	100.0	100.0
Southwestern	58.3	64.2	58.0
Western	42.5	45.5	42.0
Region 3			
Cody	33.1	44.9	52.6
Mackenzie	99.9	99.9	99.8
Region 4			
Cooley	99.5	99.6	98.0
Ford	63.5	68.5	75.5
Redford	23.1	43.7	52.0
Region 5			
Central	99.9	100.0	100.0
Mumford	99.8	99.9	99.9

	1975	1976	Estimated 1977
Region 6			
Osborn	29.9	54.8	62.0
Pershing	89.7	88.7	86.0
Region 7			
Denby	19.6	46.1	59.4
Finney	61.4	57.0	57.0
Region 8			
Kettering	99.7	99.9	99.8
King	99.9	100.0	99.9
Southeastern	99.3	99.1	99.1
City-Wide			
Cass	83.0	81.5	81.5

Percentage Black Students in Middle Schools
1975, 1976 and Estimated 1977

	1975	1976	Estimated 1977
Region 1			
Greusel	83.0	88.8	86.0
Hutchins	99.4	99.4	100.0
Jefferson	91.1	88.9	92.3
Knudsen	99.9	99.9	100.0
Pelham	66.7	72.9	75.0
Sherrard	100.0	100.0	100.0
Spain	100.0	99.0	100.0

Region 2	1975	1976	Estimated 1977
Boynton	100.0	41.2	39.8
Condon	94.9	51.9	53.0
Earhart	11.4	36.8	35.0
Hunter		35.7	36.7
McMichael	100.0	100.0	100.0
McMillan		35.7	
Munger	46.4	47.6	48.0
Webber	99.9	99.8	100.0
Wilson	4.0	41.0	41.9
Clippert-McGraw Magnet	50.9	50.4	52.0
Region 3			
Brooks	69.0	65.4	66.3
Drew	99.5	99.7	98.8
Ford	93.0		
Lessenger	7.3	51.1	56.3
Noble	99.3	99.5	99.7
Ruddiman	46.7	58.8	70.7
Tappan		99.8	99.6
Winterhalter	99.9	99.8	99.8
Ann Arbor Trail Magnet		65.8	59.8
Region 4			
Cadillac	96.6	96.9	97.8
Cerveny	99.0	73.5	74.9
Emerson	44.3	54.4	61.9
Guest		99.4	99.5
Harding	21.6	44.2	43.8
Mettetal	79.9		
Murphy	36.5	53.8	58.1
Taft	48.0	62.3	67.1
Vetal		66.1	70.7
Winship	95.8	97.2	97.3
Ludington Magnet	56.6	59.5	

Region 5	1975	1976	Estimated 1977
Beaubien	99.7	99.8	99.9
Coffey	76.4	86.4	94.0
Durfee	100.0	99.6	100.0
Hampton	99.2	99.8	99.9
Longfellow	100.0	100.0	99.9
Post	99.8	100.0	100.0
Region #5 Magnet	89.8	91.8	
Region 6			
Cleveland	79.1	89.7	88.9
Farwell	87.2	63.3	64.0
Grant		61.0	60.5
Nolan	71.2	63.4	68.9
Richard	9.2	46.7	50.0
Von Steuben	7.8	58.3	54.0
Law Magnet	51.2	57.9	
Region 7			
Arthur	6.3	57.3	
Clark		57.8	
Columbus	2.0	50.3	47.0
Goodale	37.2	51.7	
Hamilton		61.6	70.6
Jackson	95.2	97.0	61.8
Joy	99.6	68.7	61.5
Keith		100.0	100.0
Region #7 Magnet	54.1	55.0	
Region 8			
Barbour	99.9	99.8	100.0
Burroughs	98.5	97.7	95.6
Butzel	99.3	98.8	98.5
Foch	98.9	99.3	99.5
Miller	99.7	99.1	99.3
Robinson	94.1	97.5	85.0
Young Magnet	57.9	68.2	

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